



MINISTRY OF FINANCE AND ECONOMIC MANAGEMENT

GOVERNMENT OF THE COOK ISLANDS

ENVIRONMENTAL SOCIAL SAFEGUARDS FRAMEWORK

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INTRODUCTION

The Government of the Cook Islands Environmental Social Safeguards Framework sets out the Government's commitment to sustainable development. Through this Environmental Social Safeguards Framework, Government will enhance the implementation of the National Sustainable Development Plan (NSDP) for all projects planned and implemented in the Cook Islands. It is also aligned to the international conventions that the Cook Islands has signed, ratified and has committed to, under the umbrella of the following United Nations bodies: World Health Organization (WHO), International Labour Organization (ILO), Food and Agricultural Organization (FAO), United Nations Educational Scientific and Cultural Organization (UNESCO), United Nations Framework Convention on Climate Change (UNFCCC) and the United Nations Convention on Biodiversity, United Nations Convention on the Rights of Child (UNCRC), United Nations Convention on the Elimination of Discrimination Against Women (CEDAW), and the United Nations Convention on the Rights of Persons with Disability. The nine Environmental Social Safeguard Standards (ESSS) establish the standards that a project will meet through the project life cycle and are as follows:

ESSS 1: Assessment and Management of Environmental and Social Risks and Impacts

ESSS2: Labour and Working Conditions

ESSS3: Resource Efficiency and Pollution Prevention

ESSS4: Community Health, Safety and Security

ESSS5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

ESSS6: Biodiversity Conservation and Sustainable Management of Living Natural Resources

ESSS7: Indigenous People and Traditional Local Communities

ESSS8: Cultural Heritage

ESSS9: Stakeholder Engagement and Information Disclosure

Environmental Social Safeguard Standard 1 (ESSS1) applies to all projects for which financing is sought. ESSS1 establishes the importance of:

- (a) The project in addressing the risks and impacts of the project;
- (b) An integrated environmental and social assessment to identify risks and impacts of the project;
- (c) Effective community engagement through disclosure of project related information, consultation and feedback; and
- (d) Management of environmental and social risks throughout the project life cycle.

It is required that all environmental and social risks and impacts of the project be as part of the environmental and social assessment conducted in accordance with ESSS1. These risks and impacts should be identified in the project 'Concept' stage of Te Tarai Vaka. The means of mitigating, reducing, minimizing and addressing these risks and impacts should be considered and outlined at and in conjunction with the Activity 'Planning' Stage of Te Tarai Vaka.

ESSS 2 – ESSS 9 sets out the obligations of the project in identifying and addressing environmental and social risks and impacts that may require particular attention. These standards set out objectives and requirements to avoid, minimize, reduce and mitigate risks and impacts; and where lasting impacts remain, to compensate for or offset such impacts.

MINISTRY OF FINANCE AND ECONOMIC MANAGEMENT (MFEM) ENVIRONMENTAL SOCIAL SAFEGUARDS POLICY

PURPOSE

1. This Environmental Social Safeguards Policy for project financing sets out the requirements of the Cook Islands Government in relation to projects that it supports. Ensuring the implementation of this Policy will be the Ministry of Finance and Economic Management (MFEM).

OBJECTIVES AND PRINCIPLES

2. The Cook Islands Government is committed to support projects that are aligned to the achievement of the National Sustainable Development Plan (NSDP), and therefore projects must be environmentally and socially sustainable.

3. To this end, specific Environmental Social Safeguards Standards (ESSS) have been defined. These are designed to avoid, minimize, reduce or mitigate the adverse environmental and social risks and impacts of all projects. The MFEM will assist with the application of the ESSS to projects that have been supported for financing in accordance with this Environmental and Social Safeguards Policy.

4. To carry out this Policy, the MFEM will:

- (a) Facilitate due diligence of the proposed project, proportionate to the nature and potential significance of the environmental and social risks and impacts related to the project;
- (b) As where required, support the early and continuing engagement and consultation with stakeholders, in particular affected communities, and in providing project-based grievance mechanisms;
- (c) Assist the project in identifying appropriate methods and tools to assess and manage the potential environmental and social risks and impacts of the project;
- (d) Ensure the monitoring of the environmental and social performance of a project in accordance with the ESSS.

5. The environmental and social risks and impacts which will be taken into account during due diligence include the following:

- (a) Environmental risks and impacts include:
 - (i) Those related to community safety;
 - (ii) Those related to climate change and other transboundary or global risks and impacts;
 - (iii) Any material threat to the protection, conservation, maintenance and restoration of natural habitats and biodiversity; and
 - (iv) Those related ecosystem services and the use of natural resources such as fisheries and forests, and
- (b) Social risks and impacts, include:
 - (i) Threats to human security through possible personal and communal conflict, crime or violence;

- (ii) Risks that project impacts fall disproportionately on individuals or groups who, because of their particular circumstances, may be disadvantaged or vulnerable;
- (iii) Any prejudice or discrimination toward individuals or groups in providing access to project benefits, particularly in the case of those who may be disadvantaged or vulnerable;
- (iv) Negative economic or social impacts relating to the involuntary taking of land or restriction on land use;
- (v) Risks or impacts associated with land and natural resource tenure and use, including potential project impacts on local land use patterns, land access and availability, food security and land values;
- (vi) Impacts on health, safety and wellbeing of workers and project affected communities; and
- (vii) Risks to cultural heritage.

6. Projects are required to meet the following Environmental Social Safeguards Standards:

Environmental Social Safeguard Standard 1: Assessment and Management of Environmental and Social Risks and Impacts

Environmental Social Safeguard Standard 2: Labour and Working Conditions

Environmental Social Safeguard Standard 3: Resource Efficiency and Pollution Prevention

Environmental Social Safeguard Standard 4: Community Health, Safety and Security

Environmental Social Safeguard Standard 5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

Environmental Social Safeguard Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources

Environmental Social Safeguard Standard 7: Indigenous People and Traditional Local Communities

Environmental Social Safeguard Standard 8: Cultural Heritage

Environmental Social Safeguard Standard 9: Stakeholder Engagement and Information Disclosure.

7. The Environmental Social Safeguards Standards (ESSS) are designed to help manage the risks and impacts of a project through a risk outcomes based approach. The desired outcomes for the project are described in the objective of each ESSS, followed by specific requirement to help achieve those objectives through ways that are appropriate to the nature and scale of the project and proportionate to the level of environmental and social risks and impacts.

SCOPE OF APPLICATION

8. For the purposes of this Policy, the term project refers to the activities for which the Government's support is being sought (this relates to both domestic and development partner funding). Projects may include new facilities or activities and/or existing facilities or activities, or a combination of the same projects may include subprojects.

9. Where the Government is financing a project with multilateral or bilateral funding agencies, the MFEM will cooperate with such agencies in order to agree on a common approach for the assessment and management of environmental and social risks and impacts of the project. A common approach will be acceptable to the MFEM, provided that such an approach will enable the project to achieve the objectives materially consistent with MFEM’s ESSS.

MFEM Requirements

10. MFEM will require projects to conduct environmental and social assessment of projects proposed for support in accordance with ESSS1, commencing at the ‘Concept’ Stage of Te Tarai Vaka.

11. MFEM will require that during the ‘Planning’ stage of the Te Tarai Vaka process that the requirements of the ESSS are met in a manner and timeframe acceptable to the MFEM. In establishing the manner and acceptable timeframe, the MFEM will take into account the nature and significance of the potential environmental and social risks and impacts, the timing for the development and implementation of the project, the capacity of the implementing agency involved, and the specific measures and actions to be put in place or taken by the implementing agency to address such risks and impacts.

12. Where MFEM has agreed that an implementing agency may plan or take specific measures or actions to avoid, minimize, reduce or mitigate specific risks and impacts over a specified timeframe, the MFEM will require that an implementing agency commit to not carrying out any activities or taking any actions in relation to the project that may cause material adverse environmental and social risks or impacts until the relevant plans, measures or activities have been completed in accordance with the Environmental and Social Commitment Plan (ESCP).

A. Environmental and social risk classification

13. During the ‘Concept’ stage of Te Tarai Vaka, projects must be assigned to one of three classifications reflecting the level of risk and impact and the type of Impact Assessment that is required. Category A, means that the project carries substantial or high risk. Category B, means that the project has moderate risk. Category C means that the project has low or minimal risk.

Category A	Substantial or high risk	Conduct a comprehensive environmental and social risk assessment as per the MFEM’s ESS framework and Gender Policy. MFEM will work with the implementing agency on the appropriate tools to be used taking into account the mitigation hierarchy in ESSS1.
Category B	Moderate risk	Conduct an environmental and risk assessment as per

		the MFEM’s ESS framework and Gender Policy. MFEM will work with the implementing agency on the appropriate tools to be used taking into account the mitigation hierarchy in ESS1.
Category C	Low or minimal risk	Conduct a scoping of initial environmental and social assessment to identify risks and impact as per this ESS.

14. In determining the appropriate risk classification, the MFEM will take into account relevant issues, such as the type, location, sensitivity, and scale of the project; the nature and magnitude of the potential environmental and social risks and impacts; and the capacity and commitment of the implementing agency to manage the environmental and social risks and impacts in a manner consistent with the ESS. Other areas of risk may also be relevant to the delivery of environmental and mitigation measures and outcomes, depending on the specific project and the context in which it is being developed. These include legal and institutional considerations; the nature of the mitigation and technology being proposed; governance structures and legislation; and considerations relating to stability, conflict or security. The MFEM will disclose the project’s classification and the basis for that classification on the MFEM website and in project documents.

15. The MFEM will review the risk classification assigned to the project on a regular basis, including during implementation, and will change the classification where necessary, to ensure that it continues to be appropriate. Any change to the classification will be disclosed on the MFEM’s website.

B. Environmental and social due diligence

16. The MFEM will conduct environmental and social due diligence of all projects proposed for support during the ‘Concept’ and ‘Planning’ stages of Te Tarai Vaka. The purpose of the environmental and social due diligence is to assist the MFEM in deciding whether to provide support for the proposed project and, if so, the way in which environmental and social risks and impacts will be addressed in the assessment, development and implementation of the project.

17. The environmental and social due diligence will be appropriate to the nature and the scale of the project, and proportionate to the level of environmental and social risks and impacts, with due regard to the mitigation hierarchy (defined in ESS1). The due diligence will assess whether the project is capable of being developed and implemented in accordance with the ESS.

18. The MFEM’s due diligence responsibilities will include, as appropriate:

- (a) Reviewing the information provided by the implementing agency relating to the environmental and social risks and impacts of the project (for example, prefeasibility studies, scoping studies, national environmental and social assessment), and requesting

additional and relevant information where there are gaps that prevent the MFEM from completing its due diligence; and

- (b) Providing guidance to assist the implementing agency in developing appropriate measures consistent with the mitigation hierarchy to address environmental and social risks and impacts in accordance with ESS. The implementing agency is responsible for ensuring that all relevant information is provided to the MFEM so that the MFEM can fulfil its responsibility to undertake environmental and social due diligence in accordance with this Policy.

19. The MFEM recognizes that implementing agencies may have different levels of information regarding the environmental and social risks and impacts available at the time that the MFEM carries out its due diligence. In such circumstances, the MFEM will assess the risks and impacts of the proposed project based on the information that is available to the MFEM, together with the assessment of (a) the risks and impacts inherent to the type of project and specific context in which the proposed project will be developed and implemented; and (b) the capacity and commitment of the implementing agency to develop and implement the project in accordance with the ESS. The MFEM will assess the significance of the gaps in information, and the potential risk this may present to achieving the objectives of the ESS. The MFEM will reflect this assessment in the relevant project documents at the time the proposed financing is submitted for approval.

18. Where the MFEM is approached to provide support for a project that is under construction or in progress, MFEM's due diligence will include a gap analysis against the ESS to identify whether any additional studies or mitigation measures are required to meet MFEM's requirements.

19. Depending on the potential significance of the environmental and social risks and impacts, the MFEM may determine whether the implementing agency will be required to retain independent third party specialist to assist in the assessment of environmental and social impacts.

C. Environmental and Social Commitment Plan (ESCP)

20. The MFEM will agree on an ESCP with the implementing agency. The ESCP will set out the material measures and actions required for the project to meet the ESS over a specified timeframe. The ESCP will form part of the funding agreement. The agreement will include, as necessary, obligations of the implementing agency to support the implementation of the ESCP.

21. The MFEM will require the implementing agency to implement the measures and actions identified in the ESCP diligently, in accordance with the timeframes specified in the ESCP, and to review the status of implementation of the ESCP as part of its monitoring and reporting. The draft ESCP will be disclosed as early as possible, and before project appraisal.

22. The MFEM will require the implementing agency to prepare, submit to the MFEM for approval and implement a process that allows for adaptive management of proposed project changes or unforeseen circumstances. The agreed adaptive management process will be set out in the ESCP. The process will specify how such changes or circumstances are to be managed and reported, and

how any necessary changes will be made to the ESCP and the management tools used by the implementing agency.

D. Information disclosure

23. The MFEM will require the implementing agency to provide sufficient information about the potential risks and impacts of the project for the implementing agency's consultations with its stakeholders. Such information will be disclosed in a timely manner, in an accessible place, and in a form that is understandable to project affected parties and other interested parties, as set out in ESS9, so they can provide meaningful input into project planning and mitigation measures.

24. The MFEM will disclose documentation relating to the environmental and social risks and impacts of projects classified into category A (substantial or high risks) and category B (moderate risks) prior to project appraisal. This documentation will reflect the environmental and social assessment of the project, and be provided in draft or final form (if available). The documentation will address, in an adequate manner, the key risks and impacts of the project, and will provide sufficient detail to inform the stakeholder engagement and the MFEM decision making. Final or updated documentation will be disclosed when available.

E. Consultation and participation

25. The MFEM recognises the importance of early and continuing engagement and meaningful consultation with stakeholders. The MFEM will require that the implementing agency to engage with stakeholders, including communities, groups, or individuals affected by proposed projects, and with other interested parties through information disclosure, consultation, and informed participation in a manner proportionate to the risks and impacts on affected communities. The MFEM will have the right to participate in consultation activities to understand the concerns of affected people, and how such concerns will be addressed by the implementing agency project design and mitigation measures, in accordance with ESS9. The MFEM will monitor, as part of its due diligence, the implementation of consultation and stakeholder engagement by the implementing agency.

26. In order to determine the applicability of ESS 7, the MFEM will undertake screening to determine whether indigenous people/toketoke enua are present in, or have collective attachment to, the proposed project area. In conducting this screening, the MFEM may seek the technical advice of specialists with expertise on the social and cultural groups in the area. The MFEM may also consult the indigenous people concerned and the implementing agency. The outcome of meaningful consultation will be documented. This will contribute to the decision making as to whether to proceed with the project or not.

F. Monitoring and implementation support

27. The MFEM will monitor the environmental and social performance of the project in accordance with the requirements of the ESCP, and will review the ESCP including changes in the design of a project or project circumstances. The extent and mode of the MFEM monitoring with respect to environmental and social performance will be proportionate to the potential

environmental and social risks and impacts of the project. A project will not be considered complete until the measures and actions set out in the ESCP have been implemented.

G. Grievance mechanism and accountability

28. The MFEM will require the project to provide a grievance mechanism, process or procedures to receive and facilitate resolution of concerns and grievances of project affected parties arising in connection with the project, in particular about the implementing agency's environmental and social performance. The grievance mechanism will be proportionate to the risks and impacts of the project.

29. Project affected parties may submit complaints to the project grievance mechanism, which MFEM will be overseeing. This will ensure that complaints received are promptly reviewed and project related concerns are addressed.

H. Institutional and implementation arrangements

30. The MFEM will allocate responsibilities and appropriate necessary resources to support the effective implementation of this Policy. Additionally, the MFEM will develop and maintain directives, procedures and appropriate guidance and information tools to assist in implementing this Policy.

31. This Policy will be reviewed on an ongoing basis and will be amended or updated as appropriate.

ESSS1. ASSESSMENT AND MANAGEMENT OF ENVIRONMENTAL AND SOCIAL RISKS AND IMPACTS

INTRODUCTION

1. ESSS1 sets out the **implementing agency’s responsibilities** for assessing, managing and monitoring environmental and social risks and impacts associated with each stage of a project supported by the Government of the Cook Islands and also external development partners, in order to achieve environmental and social outcomes consistent with the ESSS.

2. The ESSS are designed to help the implementing agency to manage the risks and impacts of a project, and improve their environmental and social performance, through a risk and outcome based approach. The desired outcomes for the project are described in the objectives of each ESSS, followed by specific requirements to help the implementing agency achieve these objectives through means that are appropriate to the level of environmental and social risks and impacts.

3. During the ‘Concept’ stage of Te Tarai Vaka, the implementing agency must identify the likely environmental and social risks and impacts of the project. The table below provides guidance on environmental and social risks and impacts.

Environmental Risks and Impacts	Social Risks and Impacts
<ul style="list-style-type: none"> • Those relating to community safety (including safe use of pesticides) • Those related to climate change and other transboundary or global risks and impacts • Any material threat to the protection, conservation, maintenance and restoration of natural habitats and biodiversity • Those related to ecosystem services and the use of the living natural resources, such as fisheries and forests 	<ul style="list-style-type: none"> • Threats to human security through the escalation of personal, communal or national conflict, crime or violence • Risks that project impacts fall disproportionately on individuals and groups who, because of their particular circumstances, may be disadvantaged or vulnerable • Any prejudice or discrimination toward individuals or groups in providing access to development resources and project benefits, particularly in the case of those who may be disadvantaged or vulnerable • Negative economic and social impacts relating to the involuntary taking of land or restrictions on land use • Risks or impacts relating to land and natural resource use and tenure, including (as relevant) potential project impacts on local land use patterns and arrangements, land access and availability, food security and land values, and any corresponding risks related to conflict and contestation over land and natural resources • Impacts on the health, safety and wellbeing of workers and project affected communities • Risks to cultural heritage

When the project 'Concept' has been approved for progression to the 'Planning' stage of Te Tarai Vaka, the implementing agency will conduct environmental and social assessment of projects proposed for support to help ensure that projects are environmentally and socially sound and sustainable. The environmental and social assessment will be proportionate to the risks and impacts of the project. It will inform the design of the project, and will be used to identify mitigation measures and actions and to improve decision making.

4. Implementing agencies will manage the environmental and social risks and impacts of the project throughout the project life cycle in a systematic manner, proportionate to the nature and scale of the project and potential risks and impacts.

5. ESSS1 includes the following annexes, which form part of ESSS1, and set out certain requirements in more detail:

- **Annex 1:** Environmental and Social Assessment;
- **Annex 2:** Environmental and Social Commitment Plan; and
- **Annex 3:** Management of Contractors.

OBJECTIVES

- To identify, evaluate and manage the environment and social risks and impacts of the project in a manner consistent with the ESSS.
- **To adopt a mitigation hierarchy approach to:**
 - (a) Anticipate and avoid risks and impacts;**
 - (b) Where avoidance is not possible, minimise or reduce risks and impacts to acceptable levels;**
 - (c) Once risks and impacts have been minimised or reduced, mitigate; and**
 - (d) Where significant residual impacts remain, compensate for or offset them, where technically and financially feasible.**
- To adopt differentiated measures so that adverse impacts do not fall disproportionately on the disadvantaged or vulnerable, and they are not disadvantaged in sharing development benefits and opportunities resulting from the project.
- To utilise national environmental and social institutions, systems, laws, regulations and procedures in the assessment, development and implementation of projects.
- To promote improved environmental and social performance, in ways which recognise and enhance the implementing agency capacity.

SCOPE OF APPLICATION

6. ESSS1 applies to all projects seeking funding from Cook Islands Government and development partners. Application of the ESSS1 will depend on the level of risks and impacts of the project.

REQUIREMENTS

7. The implementing agency will assess, manage and monitor the environmental and social risks and impacts of the project throughout the project life cycle so as to meet the requirement of the ESSS in a manner and within a timeframe acceptable to the MFEM.

The implementing agency will:

- (a) Conduct an environmental and social assessment of the proposed project, including stakeholder engagement;
- (b) Undertake stakeholder engagement and disclose appropriate information in accordance with ESSS9;
- (c) Develop a ESCP and implement all measures and actions set out within the ESCP; and
- (d) Conduct monitoring and reporting on the environmental and social performance of the project against the ESSS.

8. Where the ESCP requires the implementing agency to plan or take specific measures and actions over a specified timeframe to avoid, minimise, reduce or mitigate specific risks and impacts of the project. The implementing agency will not carry out any activities in relations to the project that may cause material or adverse environmental or social risks or impacts until the relevant plans, measures or actions have been completed in accordance with the ESCP.

A. Environmental and social assessment

9. The implementing agency will carry out an environmental and social assessment of the project to assess the environmental and social risks and impacts of the project throughout the project life cycle. The assessment will be proportionate to the potential risks and impacts of the project, and will assess, in an integrated way, all relevant direct, indirect and cumulative environmental and social risks and impacts throughout the project life cycle, including those specifically identified in ESSS 2-9.

10. The implementing agency, in consultation with the MFEM, will identify and use appropriate methods and tools, including scoping, environmental and social analyses, investigations, audits, surveys and studies, to identify and assess the potential environmental and social risks and impacts of the proposed project. These methods and tools will reflect the nature and scale of the project, and will include, as appropriate, a combination (or elements of) the following environmental and social impact assessment (ESIA); environmental audit; hazard or risk assessment; social and conflict analysis; environmental and social management plan (ESMP). The environmental and social assessment will be based on current information, including an accurate description and delineation of the project and any associated aspects, and environmental and social baseline data at an appropriate level of detail sufficient to inform characterisation and identification of risks and impacts and mitigation measures. The assessment will evaluate the project's potential environmental and social risks and impacts; examine project alternatives; identify ways of improving project selection, siting, planning, design and implementation in order to apply the mitigation hierarchy for adverse environmental and social impacts and seek opportunities to enhance the positive impacts of the project. The environmental and social assessment will include stakeholder engagement as an integral part of the assessment, in accordance with ESSS9.

11. The environmental and social assessment will be an adequate, accurate, and objective evaluation and presentation of the risks and impacts. For Category A (substantial or high risk) projects, as well as situation in which the implementing agency has limited capacity, independent specialist should be engaged to carry out the environmental and social assessment.

12. The implementing agency will ensure that the environmental and social assessment takes into account in an appropriate manner all issues relevant to the project, including: (a) the applicable policy framework, national laws and regulations, island by-laws, and institutional capabilities relating to environmental and social issues, applicability of project to international treaties and agreements; (b) applicable requirements under the ESSS; (c) relevant good international industry practices.

13. The environmental and social assessment will apply a mitigation hierarchy, which will:

- (a) Anticipate and avoid risks and impacts;**
- (b) Where avoidance is not possible, minimise or reduce risks and impacts to acceptable levels;**
- (c) Once risks and impacts have been minimised or reduced, mitigate; and**
- (d) Where significant residual impact remain, compensate for or offset them, where technically and financially feasible.**

14. The environmental and social assessment, during the ‘Concept’ and ‘Planning’ stages of Te Tarai Vaka, will take into account all relevant environmental and social risks and impacts of the project. This will also assist in completing the Environment Declaration, as required by the National Environment Service. Environmental and social risks and impacts to be considered include:

Environmental Risks and Impacts	Social Risks and Impacts
<ul style="list-style-type: none"> • Those relating to community safety (including safe use of pesticides) • Those related to climate change and other transboundary or global risks and impacts • Any material threat to the protection, conservation, maintenance and restoration of natural habitats and biodiversity • Those related to ecosystem services and the use of the living natural resources, such as fisheries and forests 	<ul style="list-style-type: none"> • Threats to human security through the escalation of personal, communal or national conflict, crime or violence • Risks that project impacts fall disproportionately on individuals and groups who, because of their particular circumstances, may be disadvantaged or vulnerable • Any prejudice or discrimination toward individuals or groups in providing access to development resources and project benefits, particularly in the case of those who may be disadvantaged or vulnerable • Negative economic and social impacts relating to the involuntary taking of land or restrictions on land use • Risks or impacts relating to land and natural resource use and tenure, including (as relevant) potential project impacts on local land use patterns and arrangements, land access and availability,

	<p>food security and land values, and any corresponding risks related to conflict and contestation over land and natural resources</p> <ul style="list-style-type: none"> • Impacts on the health, safety and wellbeing of workers and project affected communities • Risks to cultural heritage
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15. Where the environmental and social assessment of the project identifies specific individuals or groups as disadvantaged or vulnerable, the implementing agency will propose and implement differentiated measures so that adverse impacts do not fall disproportionately on the disadvantaged or vulnerable, and they are not disadvantaged in sharing any development benefits and opportunities resulting from the project.

B. Environmental and Social Commitment Plan (ESCP)

16. The implementing agency will develop and implement an ESCP, which will set out measures and actions required for the project to achieve compliance with the ESSS over a specified timeframe. The MFEM will assist the implementing agency in identifying appropriate methods and tools to assess and manage the potential environmental and social risks and impacts of the project, and developing the ESCP. The draft ESCP will be disclosed as early as possible, and before the project appraisal in the ‘Planning’ stage of Te Tarai Vaka.

17. The ESCP will take into account the findings of the environmental and social assessment, the MFEM’s environmental and social due diligence, and the results of the engagement with stakeholders. It will be an accurate summary of material measures and actions required to avoid, minimise, reduce or otherwise mitigate the potential environmental and social risks and impacts of the project. A completion date for each action will be specified in the ESCP.

18. The ESCP will set out a process that allows for adaptive management of proposed project changes or unforeseen circumstances. The process will set out how such changes or circumstances will be managed and reported and any necessary changes will be made to the ESCP and relevant management tools.

19. The implementing agency will implement the measures and actions identified in the ESCP in accordance with the specified timelines, and will review the status of implementation of the ESCP as part of its monitoring and reporting obligations.

20. The ESCP will describe the different management tools that the implementing agency will use to develop and implement the agreed measures and actions. These management tools will include, as appropriate, environmental and social management plans, operational policies, operational manuals, management systems, procedures, practices and capital investments. All management tools will apply the mitigation hierarchy, and incorporate measures so that the project will meet the requirements of applicable laws and regulations and ESSS in accordance with the ESCP throughout the project life cycle.

21. The level of detail and complexity of the management tools will be proportionate to the project's risks and impacts, and the measures and actions identified to address such risks and impacts. They will take into account the experience and capacity of the parties involved with the project, including the implementing agency, project affected communities and other interested parties, and aim to support improved environmental and social performance.

22. The management tools will define desired outcomes in measurable terms to the extent possible, with elements such as targets and performance indicators that can be tracked over defined time lines.

C. Project monitoring and reporting

23. The implementing agency will monitor the environmental and social performance of the project. The extent and mode of monitoring will be agreed upon with the MFEM, and will be proportionate to the nature of the project, the project's environmental and social risks and impacts, and compliance requirements. The implementing agency will ensure that adequate institutional arrangements, systems, resources and personnel are in place to carry out monitoring.

24. Monitoring will normally include recording information to track performance, and establishing relevant operational controls to verify and compare compliance and progress.

25. The implementing agency will provide regular reports as set out in the ESCP (no less than annually) to the MFEM. Such reports will provide accurate and object record of the project implementation, including compliance to the ESCP and the requirement of the ESS. Such reports will include information on stakeholder engagement conducted during project implementation in accordance with ESS9.

26. Based on the results of monitoring, the implementing agency will identify any necessary corrective and preventive actions, and will incorporate these in an amended ESCP or relevant management tool, in a manner acceptable to MFEM. The implementing agency will implement the agreed corrective and preventive actions in accordance with the amended ESCP or relevant management tool, and monitor and report on these actions.

27. The MFEM may facilitate site visits by its staff or consultants acting on MFEM's behalf.

28. The implementing agency will notify the MFEM promptly of any incident or accident relating to the project which has, or likely to have, a significant adverse impact on the environment, the affected communities, the public or workers. The notification will provide sufficient detail regarding such incident or accident. The implementing agency will take immediate action to address the incident or accident and to prevent any recurrence in accordance with national law and the ESS.

D. Stakeholder engagement and information disclosure

29. As set out in ESS9, the implementing agency will continue to engage with, and provide sufficient information to stakeholders throughout the life cycle of the project, in a manner

appropriate to the nature of their interests and the potential environmental and social risks and impacts of the project.

30. For Category A (Substantial or Risk) projects, the implementing agency will provide to the MFEM and disclose documentation, as agreed with the MFEM, relating to the environmental and social risks and impacts of the project prior to project appraisal in the 'Planning' stage of the Te Tarai Vaka process. The documentation will address, in an adequate manner, the key risks and impacts of the project, and will provide sufficient detail to inform stakeholder engagement and MFEM's decision making. The implementing agency will provide to the MFEM and disclose final or updated documentation as specified in the ESCP.

ESSS1 – ANNEX 1. ENVIRONMENTAL AND SOCIAL ASSESSMENT

A. General

1. The implementing agency will undertake an environmental and social assessment to assess the environmental and social risks and impacts of a project throughout the project life cycle. The term 'environmental and social assessment' is a generic term that describes the process of analysis and planning used by the implementing agency to ensure the environmental and social impacts and risks of a project are identified, avoided, minimized, reduced or mitigated.

2. The environmental and social assessment is the primary means of ensuring projects are environmentally and socially sound and sustainable, and will be used to inform decision making. The environmental and social assessment is a flexible process that can use different tools and methods depending on the details of the project and the circumstances of the implementing agency.

3. The environmental and social assessment will be conducted in accordance with ESSS1, and will consider, in an integrated way, all relevant direct, indirect and cumulative environmental and social risks and impacts of the project, including those specifically identified in ESSS 1-9. The scope, depth and type of analysis undertaken as part of the environmental and social assessment, will depend on the nature and scale of the project, and the potential environmental and social risks and impacts that could result. The implementing agency will undertake the environmental and social assessment at the scale and level of detail appropriate to the potential risks and impacts.

4. The manner in which the environmental and social assessment will be conducted and the issues to be addressed will vary for each project. The implementing agency will consult with the MFEM to determine the process to be used, taking into account a number of activities, including scoping, stakeholder engagement, potential environmental and social issues and any specific issues raised between the MFEM and the implementing agency. The environmental and social assessment will take into account coordination and consultation with affected people and other interested parties, particularly at an early stage, to ensure that all potentially significant environmental and social risks and impacts are identified and addressed.

5. The different methods and tools used by the implementing agency to carry out the environmental and social assessment and to document the results of such assessment, including mitigation measures to be implemented, will reflect the nature and scale of the project. As specified in ESSS 1, these will include, as appropriate, a combination or elements of the following:

(i) Environmental and Social Impact Assessment (ESIA)

ESIA is an instrument to identify and assess the potential environmental and social impacts of a proposed project, evaluate alternatives, and design appropriate mitigation, management and monitoring measures.

(ii) Environmental and Social Audit

Environmental and social audit is an instrument to determine the nature and extent of all environmental and social areas of concern at an existing project or activity. The audit identifies and justifies appropriate measures and actions to mitigate the areas of concern, estimates the cost of the measures and actions, and recommends a schedule for implementing them. For certain projects, the environmental and social assessment may consist of an environmental or social audit alone; in other cases, the audit forms part of the environmental and social assessment.

(iii) Hazard or Risk Assessment

Hazard or risk assessment is an instrument for identifying, analysing, and controlling hazards associated with the presence of dangerous materials and conditions at a project site. The MFEM requires that a hazard or risk assessment for projects involving certain inflammable, explosive, reactive or toxic materials when they are present in quantities above a specified threshold. For certain projects, the environmental and social assessment may consist of the hazard or risk assessment alone; in other cases, the hazard or risk assessment forms part of the environmental and social assessment.

(iv) Cumulative Impact Assessment

Cumulative impact assessment is an instrument to consider cumulative impacts of the project in combination with the impacts from other relevant past, present or reasonably foreseeable developments as well as unplanned but predictable activities enabled by the project that may occur later or at a different location.

(v) Social and Conflict Analysis

Social and conflict analysis is an instrument that assess the degree to which the project may (a) exacerbate existing tensions and inequality within a society (both within the communities affected by the project and between these communities and others); (b) have a negative bearing on stability and human security; (c) be negatively affected by existing tensions, conflict and instability.

(vi) Environmental and Social Management Plan (ESMP)

ESMP is an instrument that details (a) the measures to be taken during the implementation and operations of a project to eliminate or offset adverse environmental and social impacts, or to reduce them to acceptable levels; and (b) the actions needed to implement these measures.

(vii) Environmental and Social Management Framework (ESMF)

ESMF is an instrument that examines the risks and impacts when a project consist of a program and/or series of subprojects, and the risks and impacts cannot be determined until the program or subproject details have been identified. The ESMF sets out the principles, rules and guidelines and procedures to assess the environmental and social risks and impacts. It contains measures and plans to reduce,

mitigate and/or offset adverse risks and impacts, provisions for estimating and budgeting the costs of such measures, and information on the agency or agencies responsible for addressing project risks and impacts, including on its capacity to manage environmental and social risks and impacts. It includes adequate information on the area in which subprojects are expected to be sited, including any potential environmental and social vulnerabilities of the area; and on the potential impacts that may occur and mitigation measures that might be expected to be used.

(viii) *Strategic Environmental and Social Assessment (SESA)*

SESA is a systematic examination of environmental and social risks and impacts, and issues, associated with a policy, plan or program, typically at the national level but also in smaller areas. The examination of environmental and social risks and impacts will include consideration of the full range of environmental and social risks and impacts incorporated in ESS1-9. SESAs are typically not location specific. They are therefore prepared in conjunction with project and site specific studies that assess the risks and impacts of the project.

6. Specific features of a project may require the implementing agency to utilize specialized methods or tools for assessment, such as a Livelihood Restoration Plan, Biodiversity Action Plan, Cultural Heritage Management Plan, and other plans as agreed with the MFEM.

7. Implementing agencies should initiate the environmental and social assessment as early as possible in project processing. They should consult with the MFEM as early possible so the environmental and social assessment is designed from the outset to meet the requirements of the ESS.

8. The environmental and social assessment will be closely integrated with the other components of the project's planning. The implementing agency will take care to ensure that conflict of interest is avoided when individuals or entities are engaged to carry out the environmental and social assessment.

B. INSTITUTIONAL CAPACITY

9. Environmental and social assessment can provide opportunities for coordinating environmental and social related responsibilities and actions in a way that goes beyond project itself and, as a result, where feasible should be linked to other environmental and social strategies and action plans. The environmental and social assessment can strengthen environmental and social management capacities.

10. The implementing agency may include components in the project to strengthen its legal or technical capacity to carry out key environmental and social assessment functions. If the MFEM concludes that the implementing agency has inadequate legal or technical capacity to carry out such functions, the MFEM may require strengthening programs to be included as part of the project. If the project includes one or more elements of capacity strengthening, these elements will be subject to periodic monitoring and evaluation as required by ESS1.

C. INDICATIVE OUTLINE OF AN ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT (ESIA)

11. Where an environmental and social impact assessment is prepared as part of the environmental and social assessment, it will include the following:

(a) Executive Summary

- Concisely discusses significant findings and recommended actions.

(b) Legal and Institutional Framework

- Analyses the legal and institutional framework for the project, within which the environmental and social assessment is carried out.
- Compares the implementing agency's existing environment and social framework and the ESSS and identifies the gaps between them.
- Identifies and assesses the environmental and social requirements of any co-financiers.

(c) Project Description

- Concisely describes the proposed project and its geographic, environmental, social, and temporal context, including any offsite investments that may be required (e.g. access roads, power supply, water supply, housing, raw materials, storage facilities, etc.).
- Through consideration of the details of the project, indicates the need for any plan to meet the requirements of ESSS1-9.
- Includes a map of sufficient detail, showing the project site and the area that may be affected by the project's direct, indirect, and cumulative impacts.

(d) Baseline Data

- Sets out in detail the baseline data that is relevant to decisions about project location, design, operation, or mitigation measures. This should include a discussion of the accuracy, reliability and sources of the data as well as information about dates surrounding the project identification, planning and implementation.
- Identifies and estimates the extent and quality of available data, key data gaps, and uncertainties associated with predictions.
- Based on current information, assesses the scope of the area to be studied and describes the relevant physical, biological, and socioeconomic conditions, including any changes anticipated before the project commences.
- Takes into account current and proposed development activities within the project area but not directly connected to the project.

(e) Environmental and Social Risks and Impacts

- Takes into account all relevant environmental and social risks and impacts of the project. This will include the environmental and social risks and impacts specifically identified in ESSS2-9, and any other environmental and social risks and impacts arising as a consequence of the specific nature and context of the project, including the risks and impacts identified in ESSS1, paragraph 14.

(f) Mitigation Measures

- Identifies mitigation measures and significant residual negative impacts that cannot be mitigated and, to the extent possible assesses the acceptability of those residual negative impacts.
- Identifies differentiated measures so that adverse impacts do not fall disproportionately on the disadvantaged or vulnerable.
- Assess the feasibility of mitigating the environmental and social impacts; the capital and recurrent costs of proposed mitigation measures, and their suitability under local conditions; and the institutional, training and monitoring requirements for the proposed mitigation measures.
- Specific issues that do not require further attention, providing the basis for this determination.

(g) Analysis of Alternatives

- Systematically compares feasible alternatives to the proposed project site, technology, design, and operation – including the ‘without project’ situation – in terms of their potential environmental and social impacts.
- Assess the alternatives feasibility of mitigating the environmental and social impacts; the capital and recurrent costs of alternative mitigation measures, and their suitability under local conditions; and the institutional, training, and monitoring requirements for the alternative mitigation measures.
- For each of the alternatives, quantifies the environmental and social impacts to the extent possible, and attaches economic values where feasible.

(h) Design Measures

- Sets out the basis for selecting the particular project design proposed and specifies the design features with environmental and social risks and impacts implications.

(i) Key Measures and Actions for Environmental and Social Commitment Plan (ESCP)

- Summarises key measures and actions and the timeframe required for the project to meet the requirements of the ESSS. This will be used in developing the ESCP.

(j) Appendices

- List of individuals or organisations that prepared or contributed to the environmental and social assessment.
- References – setting out the written materials both published and unpublished, that have been used.
- Record of meetings, consultations and surveys with stakeholders, including those with affected people and other interested parties. The record specifies the means of such stakeholder engagement that were used to obtain the views of affected people and other interested parties.
- Tables presenting the relevant data referred to or summarised in the main text.
- List of associated reports or plans.

D. INDICATIVE OUTLINE OF ENVIRONMENTAL SOCIAL MANAGEMENT PLAN (ESMP)

12. An EMSP consists of the set of mitigation, monitoring, and institutional measures to be taken during implementation and operation of a project to eliminate adverse environmental and social risks and impacts, offset them, or reduce them to acceptable levels. The EMSP also includes actions needed to implement these measures. The implementing agency will (a) identify the set of responses to potentially adverse impacts; (b) determine requirements for ensuring that those responses are made effectively and in a timely manner; and (c) describe the means for meeting those requirements.

13. Depending on the project, an EMSP may be prepared as a stand-alone document or the content may be incorporated into the ESCP. The content of the ESMP will include the following:

(a) Mitigation

- The ESMP identifies measures and actions in accordance with the mitigation hierarchy that reduce potentially adverse environmental and social impacts to acceptable levels. The plan will include compensatory measures, if applicable. The ESMP specifically:
 - (i) Identifies and summarises all anticipated adverse environmental and social impacts (including those involving indigenous people or involuntary resettlement);
 - (ii) Describes – with technical details – each mitigation measure, including the type of impact to which it relates and the conditions under which it is required (e.g. continuously or in the event of contingencies), together with designs, equipment descriptions, and operating procedures, as appropriate. ;
 - (iii) Estimates any potential environmental and social impacts of these measures; and
 - (iv) Takes into account, and is consistent with, other mitigation plans required for the project (e.g. for involuntary resettlement, indigenous people and cultural heritage).

(b) Monitoring

- The ESMP identifies monitoring objectives and specifies the type of monitoring with linkages to the impacts assessment and the mitigation measures described in the ESMP. Specifically, the monitoring section of the ESMP provides (a) a specific description, and technical details, of monitoring measures, including parameters to be measured, methods to be used, sampling locations, frequency of measurements, detection limits (where appropriate), and definition of thresholds that will signal the need for corrective actions; and (b) monitoring and reporting procedures to ensure early detection of conditions that necessitate particular mitigation measures; and furnish information on the progress and results of mitigation.

(c) Capacity Development and Training

- To support timely and effective implementation of environmental and social project components and mitigation measures, the ESMP draws on the environmental and

social assessment of the existence, role, and capability of responsible parties on site or at the agency and ministry level.

- Specifically, the EMSP provides a specific description of institutional arrangements, identifying which party is responsible for carrying out the mitigation and monitoring measures (e.g. for operation, supervision, enforcement, monitoring of implementation, remedial action, financing, reporting, and staff training).
- To strengthen environmental and social management capability in the agencies responsible for implementation, the EMSP recommends the establishment or expansion of the parties responsible, the training of staff and any additional measures that may be necessary to support the implementation of mitigation measures and any other recommendations of the environmental and social assessment.

(d) Implementation Schedule and Cost Estimates

- For all three aspects (mitigation, monitoring and capacity development), the ESMP provides (a) an implementation schedule for measures that must be carried out as part of the project, showing phasing and coordination with overall project implementation plans; and (b) the capital and recurrent costs estimates and sources of funds for implementing the ESMP. These figures are also integrated into the total project cost tables.

(e) Integration of ESMP with Project

- The relevant approvals for a project to proceed, based in part on the expectation that the ESMP (either stand alone or as incorporated into the ESCP) will be implemented effectively. Consequently, each of the measures and actions to be implemented will be clearly specified, including the individual mitigation and monitoring measures and actions and the institutional responsibilities relating to each, and the costs of so doing will be integrated into the project's overall planning, design, budget and implementation.

E. INDICATIVE OUTLINE OF ENVIRONMENTAL AND SOCIAL AUDIT

14. The aim of the audit is to identify significant environmental and social issues in the existing project or activities, and assess their current status, specifically in terms of meeting the requirements of the ESSS.

(a) Executive Summary

- Concisely discusses significant findings and sets out recommended measures and actions and timeframes.

(b) Legal and Institutional Framework

- Analyses the legal and institutional framework for the existing project or activities, including the issues as set out in ESSS1, paragraph 14, and where applicable, environmental and social requirements of existing financiers.

(c) Project Description

- Concisely describes the existing project or activities, and geographic, environmental, social, and temporal context.

- Identifies the existence of any plans already developed to address specific environmental and social risks and impacts (e.g. land acquisition or resettlement plan, cultural heritage plan, biodiversity plan).
- Includes a map of sufficient detail, showing the site of the existing project or activities and the proposed site for the proposed project.

(d) Environmental and Social Issues Associated with the Existing Project or Activities

- The review will consider the key risks and impacts relating to the existing project or activities. This will cover the risks and impacts identified in ESS1-9, as relevant to the existing project or activities. The audit will also review issues not covered by the ESS, to the extent that they represent key risks and impacts in the circumstances of the project.

(e) Environmental and Social Analysis

- The audit will also assess the potential impacts of the proposed project (taking into account the findings of the audit with regard to existing project or activities); and the ability of the proposed project to meet the requirements of the ESS.

(f) Proposed Environmental and Social Measures

- Based on the findings of the audit, this section will set out the suggested measures to address such findings. These measures will be included in the ESCP for the proposed project. Measures typically covered under this section include the following:
 - Specific actions required to meet the requirements of the ESS
 - Corrective measures and actions to mitigate potentially significant environmental and /or social risks and impacts associated with the existing project or activities
 - Measures to avoid or mitigate any potential adverse environmental and social risks and impacts associated with the proposed project.

ESSS 1 – ANNEX 2. ENVIRONMENTAL AND SOCIAL COMMITMENT PLAN (ESCP)

A. INTRODUCTION

1. The implementing agency will agree on an ESCP with the MFEM. It is designed to consolidate into one summary document the material measures and actions that are required for the project to achieve compliance with the ESSS over a specified timeframe in a manner satisfactory to the MFEM.

2. The ESCP will be developed as information regarding the potential risks and impacts of the project become known. It will take into account the findings of the environmental and social assessment, the MFEM's environmental and social due diligence and the results of engagement with stakeholders. Preparation of the ESCP will start as early as possible, normally at the time of the project scoping and will serve as an additional tool to the Environment Significance Declaration, to facilitate the identification of potential environmental and social risks and impacts and mitigation measures. The draft ESCP will be disclosed as early as possible, and before project appraisal in the 'Planning' stage of the Te Tarai Vaka.

B. CONTENT OF AN ESCP

3. The ESCP will be an accurate summary of the material measures and actions to address the potential environmental and social risks and impacts of the project in accordance with the mitigation hierarchy. It will form the basis for monitoring the environmental and social performance of the project. All requirements will be set out clearly, so that there is no ambiguity around compliance, timing and monitoring. Depending on the project, the ESCP may specify funding to be made available for completion of a measure or action, and include other details relevant to the completion.

4. The ESCP will also include a process that allows for adaptive management of proposed project changes or unforeseen circumstances. The process will set out how such changes or circumstances will be managed and reported and any necessary changes will be made to the ESCP and relevant management tools.

5. The ESCP will set out a summary of the organizational structure that the implementing agency will establish and maintain to implement the actions agreed in the ESCP. The organizational structure will take into account the different roles and responsibilities of the implementing agency and identify specific personnel with clear lines of responsibility and authority.

6. The ESCP will set out the systems, resources and personnel that the implementing agency will put into place to carry out monitoring, and will identify any third parties that will be used to complement and verify the implementing agency's monitoring activities.

7. The ESCP will set out a summary of training that the implementing agency will provide to address the specific actions required under the ESCP, identifying the recipients of such training and the required human and financial resources.

8. The content of an ESCP will differ from project to project. For some projects, the ESCP will capture all relevant obligations of the implementing agency, and there will be no requirements for additional plans. For other projects, the ESCP will refer to other plans, either plans that already exist or plans to be prepared (e.g. an ESMP, a resettlement plan, a hazardous waste plan) which set out detailed project requirements. In such circumstances, the ESCP will summarise key aspects of the plans. Where plans are to be developed, the ESCP will set out timeframes for completion of such plans.

C. IMPLEMENTATION OF ESCP

9. The implementing agency will implement diligently the measures and actions identified in the ESCP in accordance with the timeframes specified, and will review the status of implementation of the ESCP as part of its monitoring and reporting.

10. The implementing agency will maintain, and strengthen as necessary throughout the project life cycle, the organizational structure established to oversee the environmental and social aspects of the project. Key social and environmental responsibilities will be well defined, and communicated to all persons involved. Sufficient high-level commitment, and human and financial resources, will be provided on an ongoing basis to implement the ESCP.

11. The implementing agency will ensure that persons with direct responsibility for activities relevant to the implementation of the ESCP are adequately qualified and trained so that they have the knowledge and skills necessary to perform their work. The implementing agency, either directly or through agencies responsible for implementing the project, will provide training to address the specific measures and actions required by the ESCP, and to support effective and continuous social and environmental performance.

12. The implementing agency will notify the MFEM promptly of any proposed changes to the scope, design, implementation or operation of the project that are likely to cause an adverse change in the environmental or social risks and impacts of the project. The implementing agency will carry out, as appropriate, additional assessment and stakeholder engagement in accordance with the ESSS, and propose changes, for approval by the MFEM, to the ESCP and relevant management tools, as appropriate, in accordance with the findings of such assessments and consultation. The updated ESCP will be disclosed.

ESSS1 – ANNEX 3. MANAGEMENT OF CONTRACTORS

The implementing agency will require that all contractors engaged on the project operate in a manner consistent with the requirements set out in the ESCP. The implementing agency will manage all contractors in an effective manner, including:

- (a) Assessing the environmental and social risks and impacts associated with such contracts;
- (b) Ascertaining that contractors engaged in connection with the project are legitimate and reliable enterprises, and have knowledge and skills to perform their project tasks in accordance with their contractual commitments;
- (c) Incorporating all relevant aspects of the ESCP into tender documents;
- (d) Contractually requiring contractors to apply the relevant aspects of the ESCP and the relevant management tools, and including appropriate and effective non-compliance remedies;
- (e) Monitoring contractor compliance with their contractual commitments; and
- (f) In the case of subcontracting, requiring contractors to have equivalent arrangements with their subcontractors.

ESSS2. LABOUR AND WORKING CONDITIONS

INTRODUCTION

1. ESSS2 recognises the importance of employment creation and income generation in the pursuit of equity and inclusive economic growth. Implementing agencies can promote sound worker management relationships and enhance the development benefits of a project by treating workers in the project fairly and providing safe and healthy working conditions.

OBJECTIVES

- To promote safety and health at work.
- To promote the fair treatment, non-discrimination and equal opportunity of project workers.
- To protect project workers, including vulnerable workers such as women, persons with disabilities, children (of working age, in accordance with this ESSS) and migrant workers, contracted workers, community workers and primary supply workers, as appropriate.
- To prevent the use of all forms of forced labour and child labour.
- To support the principles of freedom of association and collective bargaining of project workers in a manner consistent with national law.
- To provide project workers with accessible means to raise workplace concerns.

SCOPE OF APPLICATION

2. The applicability of ESSS2 is established during the environmental and social assessment described in ESSS1.

3. The scope and application of ESSS2 depends on the type of employment relationship between the implementing agency and the project workers. The term “project worker” refers to:

- (a) People employed or engaged directly by the implementing agency (including the project proponent and project implementing agencies) to work specifically in relation to the project (**direct workers**);
- (b) People employed or engaged through third parties to perform work related to core functions of the project, regardless of location (**contracted workers**);
- (c) People employed or engaged by the implementing agency primary suppliers providing directly to the project, goods or materials essential for the core functions of the project (**primary supply workers**);
- (d) People employed or engaged in providing community labour (**community workers**).

4. Where government public servants are working in connection with the project, whether full-time or part-time, they will remain subject to the terms and conditions of their existing public sector employment agreement or arrangement, unless there has been an effective legal transfer of their employment or engagement to the project. ESSS2 will not apply to such government

public servants except for the provision in paragraphs 12-14 (Protecting the Work Force) and paragraphs 18-24 (Occupational Safety and Health).

REQUIREMENTS

A. WORKING CONDITIONS AND MANAGEMENT OF WORKER RELATIONSHIPS

5. The implementing agency will develop and implement written labour management procedures applicable to the project. These procedures will set out the way in which the project workers will be managed, in accordance with the requirements of the Employment Relations Act 2012, any other relevant national law, and this ESSS. The procedures will address the way in which this ESSS will apply to different categories of project workers including direct workers, and the way in which the implementing agency will require third parties to manage their workers in accordance with paragraphs 25-27.

Terms and conditions of employment

6. Project workers will be provided with information and documentation that is clear and understandable regarding their terms and conditions of employment. The information and documentation will set out their rights under the Employment Relations Act 2012, and any other relevant law, including their rights related to hours of work, wages, overtime, benefits, as well as those arising from the requirements of this ESSS. This information and documentation will be provided at the beginning of the working relationship and when any material changes to the terms of conditions of employment occur.

7. Project workers will be paid on a regular basis as required under the Employment Relations Act 2012 and/or any other national law. Deductions from payment of wages will only be allowed as per the Act or any other relevant national law, and project workers will be informed of the conditions under which such deductions will be made. Project workers will be provided with adequate periods of rest per week, annual holiday and sick, maternity and family leave as required by legislation or regulation.

8. Where required, project workers will receive written notice of termination of employment and details of severance payments in a timely manner. All wages that have been earned will be paid on or before termination of the working relationship and project workers will be provided with evidence of such payments.

Non-discrimination and equal opportunity

9. Decisions relating to the employment or treatment of project workers will not be made on the basis of personal characteristics unrelated to inherent job requirements. The employment of project workers will be based on the principle of equal opportunity and fair treatment, and there will be no discrimination with respect to any aspects of the employment relationship, such as recruitment and hiring, wages and benefits, working conditions and terms of employment, access to training, job assignment, promotion, termination of employment or retirement, or disciplinary practices. The labour management procedures will set out measures to prevent and address harassment, intimidation and/or exploitation.

10. Special measures of protection and assistance to remedy discrimination or selection for a particular job based on the inherent requirements of the job or the objectives of the project will not be deemed as discrimination, provided that they are consistent with the Employment Relations Act 2012 and/or any other national law.

11. The implementing agency will provide appropriate measures of protection and assistance to address the vulnerabilities of project workers, including specific groups of workers, such as women, people with disabilities, migrant workers and children (of working age). Such measures may be necessary only for specific periods of time, depending on the circumstances of the project worker and the nature of the vulnerability.

B. PROTECTING THE WORK FORCE

Child labour and minimum age

12. As per the Employment Relations Act, a child under the age of 13 years cannot be employed by the project.

13. Any child that is over the minimum age and under the age of 16 years may be employed or engaged in connection with the project only as according to Section 30 of the Employment Relations Act 2012, or any other national law, where the project will not interfere with the child's education or be harmful to the child's health or physical, mental, spiritual, moral or social development.

Forced labour

14. Forced labour, which consist of any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty will not be used in connection with the project. No trafficked persons will be employed in connection with the project.

C. GRIEVANCE MECHANISM

15. A grievance mechanism will be provided for all direct workers and contracted workers (and where relevant, their organisations) to raise workplace concerns. Such workers will be informed of the grievance mechanism at the time of recruitment and the measures put in place to protect them against any reprisal for its use. Measures will be put in place to make the grievance mechanism easily accessible to all such project workers.

16. The grievance mechanism will be proportionate to the nature and scale and the potential risks and impacts of the project. It will be designed to address concerns promptly, using an understandable and transparent process that provides for timely feedback to those concerned in a language that they understand, without retribution, and will operate in an independent and objective manner. The grievance mechanism may utilise existing grievance mechanisms, providing that they are properly designed and implemented, address concerns promptly, and are readily accessible to such project workers. Existing grievance mechanisms may be supplemented as needed with project specific arrangements.

17. The grievance mechanism will not block access to other judicial or administrative remedies that may be available under law or through existing arbitration procedures.

D. OCCUPATIONAL SAFETY AND HEALTH (OSH)

18. Measures relating to occupational health and safety will be applied to the project. The OSH measures will include the requirements of this section. The OSH measures applying to the project will be set out in the ESCP.

19. The OSH measures will be designed and implemented to address: (a) identification of potential hazards to project workers, particularly those that may be life threatening; (b) provision of preventive and protective measures, including modification, substitution, or elimination of hazardous conditions or substances; (c) training of project workers and maintenance of training records; (d) documentation and reporting of occupational accidents, diseases and incidents; (e) emergency prevention and preparedness and response arrangements to emergency situations; and (f) remedies for adverse impacts such as occupational injuries, deaths, disability and disease.

20. All parties who employ or engage project workers will develop and implement procedures to establish and maintain a safe working environment, including workplaces, machinery, equipment and processes under their control are safe and without risk to health, including by use of appropriate measures relating to chemical, physical and biological substances and agents. Such parties will actively collaborate and consult with project workers in promoting understanding, and methods for implementation of OSH requirements, as well as in providing information to project workers, training on occupational safety and health, and the provision of personal protective equipment without expense to the project workers.

21. Workplace processes will be put in place for project workers to report work situations that they believe are not safe or healthy, and to remove themselves from a work situation which they have reasonable justification to believe presents a serious threat to their life or health. Project workers who remove themselves from such situations will not be required to return to work until necessary remedial action to correct the situation has been taken. Project workers will not be subject to negative action for such reporting or removal.

22. Project workers will be provided with facilities appropriate to the circumstances of their work, including access to hygiene facilities. Where accommodation services are provided to project workers, policies will be put into place and implemented on the management and quality of accommodation to protect and promote the health, safety and wellbeing of the project workers, while accommodating their physical, social and cultural needs.

23. Where project workers are employed or engaged by more than one party and are working together in one location, the parties who employ or engage the workers will collaborate in applying the OSH requirements, without prejudice to the responsibility of each party for the health and safety of its own workers.

24. A system for regular review of occupational safety and health performance and the working environment will be put in place and include identification of safety and health hazards and risks, implementation of effective methods of responding to identified hazards and risks, setting priorities for taking action, and evaluation for results.

E. CONTRACTED WORKERS

25. The implementing agency will make reasonable efforts to ensure that third parties who engage contracted workers are legitimate and reliable entities and have in place labour management procedures applicable to the project that will allow them to operate in accordance with requirements of this ESSS, except for paragraphs 28-30.

26. The implementing agency will establish procedures for managing and monitoring the performance of such third parties in relation to the requirements of this ESSS. In addition, the implementation entity will incorporate the requirements of this ESSS into contractual agreements with third parties, together with appropriate noncompliance remedies. In the case of subcontracting, the implementing agency will require such third parties to include equivalent requirements and non-compliance remedies in their contractual agreements with subcontractors.

27. Contracted workers will have access to a grievance mechanism. In cases where the third party employing or engaging the workers is not able to provide a grievance mechanism to such workers, the implementing agency will make the grievance mechanism under section C of this ESSS available to the contracted workers.

F. COMMUNITY WORKERS

28. Projects may include the use of community workers in a number of different circumstances, including where labour is provided by the community as a contribution to the project, or where projects are designed and conducted for the purpose of fostering community owned and driven development, or providing a social safety net. Given the nature and objectives of such projects, the application of all the requirements of ESSS2 may not be applicable. In all such cases, the implementing agency will ensure that such labour is or will be provided on a voluntary basis through the appropriate measures.

29. Accordingly, where the project includes the provision of labour by community workers, the implementing agency will apply the relevant provisions of this ESSS in a manner which reflects and is proportionate to:

- (a) The nature and scope of the project;
- (b) The specific project activities in which the community workers are engaged; and
- (c) The nature of the potential risks and impacts to the community workers.

30. In preparing the labour management procedures, the implementing agency will clearly identify the terms and conditions on which community labour will be engaged, including the amount and method of payment (if applicable) and times of work. The labour management procedures will also specify the way in which community workers will raise grievances in relation to the project. The implementing agency will assess the potential risks and impacts of the activities to be conducted by community workers and apply the relevant requirements of the ESSS.

G. PRIMARY SUPPLY WORKERS

31. As part of the environmental and social assessment, the implementing agency will identify potential risks of child labour, forced labour and serious safety issues which may arise in relation to primary suppliers.

32. Where potential risks have been identified, the implementing agency will require primary supplier to take the appropriate remedial action.

33. The ability of the implementing agency to address these risks will be dependent on its control or influence over primary suppliers. Where remedy is not possible, the implementing agency will within a reasonable timeframe, shift the project's primary suppliers to others that can demonstrate that they are meeting the relevant requirements of this ESS.

ESSS3. RESOURCE EFFICIENCY AND POLLUTION PREVENTION AND MANAGEMENT

INTRODUCTION

1. ESSS3 recognises that economic activity often generate pollution to air, water, and land and consume finite resources that may threaten people, ecosystem services and the environment at the local, national, regional and global levels. The current and projected atmospheric concentration of greenhouse gases (GHG) threatens the welfare of current and future generations. At the same time, more efficient and effective resource use, pollution prevention and GHG emission avoidance, and mitigation technologies and practices have advanced, become more accessible and achievable.
2. This ESSS sets out the requirements to address resource efficiency and pollution prevention and management throughout the project life cycle.

OBJECTIVES

- To promote the sustainable use of resources, including energy, water and raw materials.
- To avoid or minimise adverse impacts on human health and the environment by avoiding or minimising pollution from project activities.
- To avoid or minimise project related emissions of short and long lived climate pollutants.
- To avoid or minimise generation of hazardous and non-hazardous waste.
- To minimise and manage the risks and impacts associated with pesticide use.

SCOPE OF APPLICATION

3. The applicability of this ESSS is established during the environmental and social assessment described in ESSS1.

REQUIREMENTS

4. The implementing agency will consider environmental conditions and apply technical and financially feasible resource efficiency and pollution prevention measures in accordance with the mitigation hierarchy. The measures will be proportionate to the risks and impacts associated with the project.

RESOURCE EFFICIENCY

5. The implementing agency will implement technically and financially feasible measures for improving efficient consumption of energy, water and raw materials, as well as other resources. Such measures will integrate the principles of cleaner production into product design and production processes to conserve raw materials, energy and water, as well as other resources.

Where benchmarking is available, the implementing agency will make a comparison to establish the relative level of efficiency.

A. ENERGY USE

6. The efficient use of energy is an important way in which the implementing agency can contribute to sustainable development. When the project requires significant energy use, in addition to applying the resource efficiency requirements of this ESSS, the implementing agency will adopt measures to improve energy usage, to the extent technically and financially feasible.

B. WATER USE

7. When the project requires significant use of water or will have potentially significant impacts on water quality, in addition to applying the resource efficiency requirements of this ESSS, the implementing agency will adopt measures to improve water usage, to the extent technically and financially feasible, so that the project's water use does not have significant harmful impacts on the communities and other users or the environment. These measures include, the use of additional feasible water conservation measures, the use of alternative water supplies, water consumption offsets to maintain total demand for water resources within the available supply, and evaluation of alternative project locations.

8. For projects with high water demand that may potentially have significant negative impact on communities and other users or the environment, the following will apply:

- A detailed water balance will be developed, maintained, monitored and reported periodically;
- Opportunities for improvement in water use efficiency will be identified and implemented;
- Specific water use will be assessed; and
- Operations will be benchmarked to available standards of water use efficiency.

9. As part of the environmental and social assessment, the implementing agency will assess the potential cumulative impacts of water use on communities, other users and the environment and will identify and implement appropriate mitigation measures.

C. RAW MATERIAL USE

When the project is a potentially significant user of raw materials, in addition to applying the resource efficiency requirements of this ESS, the implementing agency will adopt measures to support efficient use of raw materials, to the extent technically and financially feasible.

POLLUTION PREVENTION AND MANAGEMENT

11. The implementing agency will avoid the release of pollutants or, when avoidance is not feasible, minimize and control the concentration and mass flow of their release in line with commitments to international health and environmental conventions and If agreements; and national Health and Sewage Regulations. This applies to the release of pollutants to air, water

and land use due to routine, non-routine, and accidental circumstances, and with the potential for local, regional and transboundary impacts.

12. Where the project involves historical pollution from past activities affecting the environment for which no party has been assigned responsibility to address, the implementing agency will establish a process to identify the responsible party. If the historical pollution could pose a significant risk to human health or the environment, the implementing agency will undertake a health and safety risk assessment of the existing pollution which may affect communities, workers and the environment. Any remediation of the site must be done appropriately and in accordance with national legislation and regulation.

13. To address potential adverse project impacts on human health and the environment (such as air, surface, groundwater and soils), the implementing agency will consider relevant factors, including, for example: (a) existing environment conditions; (b) in areas already impacted by pollution, the remaining ability of the environment to absorb incremental load of pollutants while remaining at a level that is acceptable for human health and the environment; (c) existing and future land use; (d) the project's proximity to areas of importance to biodiversity; (e) the potential for cumulative impacts with uncertain and/or irreversible consequences; and (f) impacts of climate change.

A. MANAGEMENT OF AIR POLLUTION

14. In addition to the resource efficiency measures described above, the implementing agency will consider alternatives and implement technically and financially feasible and cost effective options to avoid or minimize project related air emissions during the design, construction and operation of the project.

15. As part of the environmental and social assessment of the project, the implementing agency will characterize and estimate sources of air pollution related to the project. This will include an estimate of gross GHG emissions resulting from the project, providing that such estimation is technically and financially feasible. Where the implementing agency does not have the capacity to develop the estimate of GHG emissions, the MFEM will provide assistance to the implementing agency. For small community driven development projects and other projects that have minimal sources of emissions, GHG estimations will not be required.

B. MANAGEMENT OF HAZARDOUS AND NONHAZARDOUS WASTES

16. The implementing agency will avoid the generation of hazardous and nonhazardous waste. Where avoidance of waste generation is unavoidable, the implementing agency minimize the generation of waste and reuse, recycle and recover waste in a manner that is safe for human health and the environment. Where waste cannot be reused, recycled or recovered, the implementing agency will treat, destroy, or dispose of it in an environmentally sound and safe manner that includes the appropriate control of emissions and residues resulting from the handling and processing of waste material.

17. If the waste generated is considered hazardous, the implementing agency will comply with requirements for management (including storage, transportation and disposal) of hazardous

wastes according to national law and relevant international conventions and agreements, including those relating to transboundary movement. When hazardous waste management is to be undertaken by a third party, the implementing agency will use contractors that are reputable and legitimate entities.

C. MANAGEMENT OF CHEMICALS AND HAZARDOUS MATERIALS

18. The implementing agency will avoid to manufacture, trade and use of chemicals and hazardous materials subject to international bans, restrictions or phase-out's, consistent with government commitments under international conventions and agreements.

19. The implementing agency will minimize and control the release and use of hazardous materials, including chemical fertilizers, soil amendments and chemicals other than pesticides. The production, transportation, handling, storage and use of hazardous materials for project activities will be assessed through the environmental and social assessment. The implementing agency will consider less hazardous substitutes where hazardous materials are intended to be used in manufacturing processes or other operations.

D. MANAGEMENT OF PESTICIDES

20. The Cook Islands has prohibited from importation certain pesticides and agricultural products. As per the Rotterdam Convention, the implementing agency will refer to the prohibited listing for the Cook Islands published on the following website:

<http://www.pic.int/Procedures/ImportResponses/Database/tabid/1370/language/en-US/Default.aspx>

No prohibited pesticides will be allowed in any project.

ESSS4. COMMUNITY HEALTH AND SAFETY

INTRODUCTION

1. ESSS 4 recognises that project activities, equipment, and infrastructure can increase community exposure to risks and impacts. In addition, communities that are already subjected to impacts from climate change may also experience an acceleration or intensification of impacts due to project activities.
2. ESSS 4 addresses the health, safety, and security risks and impacts on communities that may be affected by the project and the responsibility of the implementing agencies to avoid or minimize such risks and impacts, with particular attention to people who, because of their particular situation, may be vulnerable.

OBJECTIVES

- To anticipate and avoid adverse impacts on the health and safety of project affected communities during the project life cycle from both routine and non-routine circumstances.
- To promote quality and safety, and considerations relating to climate change, in the design and construction of infrastructure.
- To avoid or minimise community exposure to project related traffic and road safety risks, diseases and hazardous materials.
- To have in place effective measures to address emergency events.
- To ensure that the safeguarding of personnel and property is carried out in a manner that avoids or minimises risks to the project affected communities.

SCOPE OF APPLICATION

3. The applicability of this ESSS is established during the environmental and social assessment described in ESSS1.
4. This ESSS addresses potential risks and impacts on communities that may be affected by project activities. Occupational safety and health (OSH) requirements for project workers are set out in ESSS2, and measures to avoid and minimize impacts on human health and the environment due to existing or potential pollution are set out in ESSS3.

REQUIREMENTS

A. COMMUNITY HEALTH AND SAFETY

5. The implementing agency will evaluate the risks and impacts of the project on the health and safety of the affected communities during the project life cycle, including those who may be

vulnerable, because of their particular circumstances. The implementing agency will identify risks and impacts and proposed mitigation measures in accordance with the mitigation hierarchy.

Infrastructure and equipment design and safety

6. The implementing agency will design, construct, operate, and decommission the structural elements of the project in accordance with national legal requirements, taking into consideration safety risks to third parties and affected communities. Structural elements of a project will be designed and constructed by competent professionals, and certified or approved by competent authorities or professionals. Structural design will take into account climate change considerations, as appropriate.

7. Where the project includes new buildings and structures that will be accessed by members of the public, the implementing agency will consider the incremental risks of the public's potential exposure to operational accidents or natural hazards, including extreme weather events. Where technically and financially feasible, the implementing agency will also apply the concept of unimpeded access for all ages and abilities to the design and construction of new buildings and structures.

8. When structural elements or components of a project are situated in high risk locations, including those with risk of extreme weather or slow onset events, and their failure or malfunction may threaten the safety of communities, the implementing agency will engage one or more independent experts with relevant and recognised experience in similar projects, separate from those responsible for the design and construction, to conduct a review as early as possible in project development and throughout the stages of project design, construction, operation, and decommissioning.

Safety of services

9. Where the project involves provision of services to communities, the implementing agency will establish and implement appropriate quality management systems to anticipate and minimize risks and impacts that such services may have on community health and safety. In such circumstances, where technically and financially feasible, the implementing agency will also apply the concept of unimpeded access for all ages and abilities.

Traffic and road safety

10. The implementing agency will identify, evaluate and monitor the potential traffic and road safety risks to workers, affected communities and road users throughout the project lifecycle and, where appropriate, will develop measures and plans to address them. The implementing agency will incorporate technically and financially feasible road safety measures into the project design to prevent and mitigate potential road safety risks to road users and affected communities.

11. Where applicable the implementing agency will undertake a road safety assessment for each phase of the project, and will monitor incidents and accidents, and prepare regular reports of such monitoring. These reports will identify negative safety issues, and establish and implement measures to resolve them.

12. For vehicles used for the purposes of the project, the implementing agency will have appropriate processes, including driver training, to improve driver and vehicle safety, as well as

systems for monitoring and enforcement. The implementing agency will ensure that all vehicles have a warrant of fitness in purchasing and leasing decisions and require regular maintenance of all project vehicles.

13. The implementing agency will take relevant safety measures to avoid the occurrence of incidents and injuries to members of the public for projects that operate construction and other equipment on public roads or where the use of project equipment will have an impact on public roads and public infrastructure.

Ecosystem services

14. The project's direct impacts on ecosystem services may result in adverse health and safety risks to and impacts on affected communities. For example, land use changes or loss of natural buffers (wetlands, upland forests, etc.) may increase flooding, landslides and fires and thus result in increased vulnerability and community related risks and impacts; impacts on the quality, quantity and availability of freshwater, may result in health-related risks and impacts. The implementing agency will identify the project's potential risks and impacts on ecosystem services that may be worsened by climate change. Adverse impacts will be avoided, and if unavoidable, the implementing agency will implement appropriate mitigation measures.

Community exposure to health issues

15. The implementing agency will avoid or minimise the potential for community exposure to water-borne, water based, water-related and vector borne diseases, and communicable and non-communicable diseases that could result from the project activities, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups.

16. The implementing agency will take measures to avoid or minimise transmission of communicable diseases that may be associated with the influx of project labour.

Management and safety of hazardous materials

17. The implementing agency will or minimize the potential for community exposure to hazardous materials and substances that may be result from the project activities. Where there is a potential for the public (including workers and their families) to be exposed to hazards, particularly those that may be life threatening, the implementing agency will exercise special care to avoid or minimise their exposure by modifying, substituting, or eliminating the condition or material causing the potential hazards. Where hazardous materials are part of an existing project infrastructure or components, the implementing agency will exercise due care during construction and implementation of the project, including decommissioning, to avoid exposure to the community.

18. The Borrower will implement measures and actions to control the safety of deliveries of hazardous materials, and of storage, transportation and disposal of hazardous materials and wastes, and implement measures to avoid or control community exposure to such hazardous material.

Emergency preparedness and response

19. An emergency event is an unexpected incident, arising from both natural and manmade hazards, typically in the form of fire, explosion, leaks or spills, which may occur for a variety of

reasons, including failure to implement operating procedures that are designed to prevent occurrence, extreme weather or lack of early warning. The implementing agency will identify and implement measures to address emergency events. The measures will be designed to address the emergency event in a coordinated and swift manner, to prevent negative implications to the health and safety of the community, and to minimise, mitigate and compensate for any impacts that may occur.

20. Implementing agencies engaged in projects having the potential to generate emergency events will conduct a risk hazard assessment (RHA), as part of the environmental and social assessment undertaken in line with ESS1. Based on the result of the RHA, the implementing agency will prepare an Emergency Response Plan (ERP) in coordination with the relevant authorities and affected community, and will take into account the emergency prevention, preparedness and response arrangements public into place with project workers under ESS2.

21. An ERP will include, where relevant: (a) engineering controls (such as containment, automatic alarms, and shutoff systems) proportionate to the nature and scale of the hazard; (b) identification of and secure access to emergency equipment available onsite or nearby; (c) notification procedures for designated emergency responders; (d) different media channels for notification of the affected community and other stakeholders; (e) a training program for emergency responders including drills at regular intervals; (f) public evacuation procedures; (g) designated coordinator for ERP implementation; and (h) measures for restoration and clean-up of the environment following any major accident.

22. The implementing agency will document its emergency preparedness and response activities, resources, and responsibilities, and will disclose appropriate information, as well as any subsequent material changes thereto, to affected communities, relevant government agencies, or any other relevant parties. The implementing agency will assist and collaborate with affected communities, relevant government agencies and other relevant parties in their preparations to respond effectively to an emergency event, especially where their participation and collaboration is crucial for an effective response.

23. The implementing agency will review the ERP on a regular basis, and confirm that it is still able to addressing the potential range of emergency events that may arise in connection to the project. The implementing agency will support affected communities, relevant government agencies and other relevant parties through training and collaboration and will conduct such training in conjunction with the training provided to project workers as part of the OSH requirement in ESS2.

B. SECURITY PERSONNEL

24. When the implementing agency retains direct or contracted workers to provide security for its personnel or property, it will assess the risks pose by those security arrangements to those within and outside of the project site. Such security arrangements will guided by the principles of proportionality and by applicable law, in relation to hiring, rules of conduct, training, equipping and monitoring of such security workers. The implementing agency will not sanction any use of force in providing security except when used for preventive and defensive purposes in proportion to the nature and extent of the threat.

25. The implementing agency will (a) verify that security personnel are not implicated by past abuses; (b) ensure that they are properly trained in the appropriate conduct toward workers and affected communities; (c) require them to act with applicable laws and any requirements set out in the ESCP.

26. The implementing agency will review all allegations of unlawful or abusive acts of security personnel, take action to prevent reoccurrence, and where necessary, report unlawful and abusive acts to the relevant authorities.

ESSS5. LAND ACQUISITION, RESTRICTIONS ON LAND USE AND INVOLUNTARY RESETTLEMENT

INTRODUCTION

1. ESSS5 recognises that project related land acquisition and restrictions on land use can have adverse impacts on communities and persons such as physical displacement (relocation, loss of residential land, loss of shelter), economic displacement (loss of land, assets or access to assets, leading to loss of income sources or other livelihood means), or both. The term involuntary resettlement refers to these impacts. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in displacement.

2. Experience and research indicate that physical and economic displacement, if unmitigated, may give rise to severe economic, social and environmental risks. Production systems may be undone; people face impoverishment if their productive resources or other income sources are lost; people may be relocated to environments where their productive skills are less applicable and the competition for resources greater; community institutions and social networks may be weakened; kin groups may be dispersed; and cultural identity, traditional authority, and the potential for mutual help may be lessened or lost. For these reasons, involuntary resettlement should be avoided. Where involuntary resettlement is unavoidable, it will be minimized and appropriate measures to mitigate adverse impacts on displaced persons (and on host communities receiving displaced persons) will be carefully planned and implemented.

OBJECTIVES

- To avoid involuntary resettlement or when unavoidable, minimise involuntary resettlement by exploring project design alternatives.
- To avoid forced evictions.
- To mitigate unavoidable adverse social and economic impacts from land acquisition or restrictions on land use by: (a) providing timely compensation for loss of assets at replacement cost and (b) assisting displaced persons in their efforts to improve, or at least restore, their livelihoods and living standards, in real terms, to pre-displaced levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.
- To improve living conditions of poor or vulnerable persons who are physically displaced, through provision of adequate housing, access to services and facilities. Security of tenure should also be given meaning that resettled individuals or communities are resettled on a site that they can legally occupy and are protected from the risk of eviction and where the tenure rights provided to them are socially and culturally appropriate.
- To conceive and execute resettlement activities as sustainable development programs, providing sufficient investment resources to enable displaced persons to benefit directly from the project, as the nature of the project may permit.

- To ensure that resettlement activities are planned and implemented with appropriate disclosure of information, meaningful consultation, and the informed participation of those affected.

SCOPE OF APPLICATION

3. The applicability of ESS5 is established during the environmental and social assessment described in ESS1.

4. This ESS applies to permanent or temporary physical and economic displacement resulting from the following types of land acquisition or restrictions on land use undertaken or imposed in connection with project implementation:

- (a) Land rights or land use rights acquired or restricted through expropriation (where the government or another authority has taken lands for the public use or benefit), in accordance with national law;
- (b) Land rights or land use rights acquired or restricted through negotiated settlements with property owners or those with legal rights to the land, if failure to reach settlement would have resulted in expropriation or other compulsory procedures;
- (c) Restrictions on land use and access to natural resources that cause a community or groups within a community to lose access to resource usage where they have traditional or customary tenure, or recognised usage rights. This may include situations where legally designated protected areas, forest, biodiversity areas or buffer zones are established in connection with the project;
- (d) Relocation of people without formal, traditional, or recognisable usage rights, who are occupying or utilising land prior to a project specific cut-off date;
- (e) Displacement of people as a result of project impacts that makes their land unusable or inaccessible;
- (f) Restriction on access to land or use of other resources including communal property and natural resources such as marine and aquatic resources, timber and non-timber forest products, fresh water, medicinal plants, hunting and gathering grounds and grazing and cropping areas;
- (g) Land rights or claims to land or resources relinquished by individuals or communities without full payment or compensation. In such cases, the implementing agency must demonstrate that: (a) potential donor/s have been appropriately informed and consulted about the project and choices available to them; (b) potential donors are aware that refusal is an option, and have confirmed in writing their willingness to proceed with the donation; (c) the amount of being donated is minor and will not reduce the donor's remaining land area below that required to maintain the donor's livelihood at current levels; (d) no household relocation is required; (e) the donor is expected to benefit directly from the project; and (f) for community or collective land, donation can only occur with the consent of individuals using or occupying the land. The implementing agency will keep a record of all consultations and agreements reached.

(h) Land acquisition or land use restrictions occurring prior to the project, but which were undertaken or initiated in anticipation of, or in preparation for, the project.

5. This ESSS does not apply to impacts on incomes or livelihoods that are not a direct result of land acquisition or land use restrictions imposed by the project. Such impacts will be addressed in accordance with ESSS1.

6. This ESSS does not apply to voluntary, legally recorded market transactions in which the seller is given a genuine opportunity to retain the land and to refuse to sell it, and is fully informed about available choices and their implications. However, where such voluntary land transactions may result in the displacement of persons, other than the seller, who occupy, use or claim rights to the land in question, this ESSS will apply.

7. Where a project supports land titling or other activities intended to confirm, regularize or determine land rights, a social, legal and institutional assessment will be required under ESSS1. The assessment aims to identify potential risks and impacts, as well as appropriate design measures to minimize and mitigate adverse economic and social impacts, especially those that affect vulnerable groups. This ESSS does not apply to disputes between private parties in land titling or related contexts. However, where persons are required to vacate land as a direct result of project supported determination that the land in question is crown/state land, this ESSS will apply (in addition to the relevant provisions of ESSS1).

8. This ESSS does not apply to land use planning or regulation of natural resources to promote their sustainability on a regional, national or subnational level (including watershed management, ground water management, fisheries management, and coastal zone management). Where a project supports such activities, the implementing agency will be required to conduct a social, legal and institutional assessment under ESSS1, in order to identify potential economic and social risks and impacts of the planning or regulation, and appropriate measures to minimize and mitigate them, in particular those that affect vulnerable groups.

9. This ESSS does not apply to the management of refugees from, or persons internally displaced by, natural disasters, conflict, crime or violence.

REQUIREMENTS

A. GENERAL

Eligibility classification

10. Affected persons may be classified as persons:

- (a) Who have formal legal rights to land or assets;
- (b) Who do not formal legal rights to land or assets, but have a claim to land or assets that is recognised or recognisable under national law; or
- (c) Who have no recognisable legal right or claim to land or assets they occupy or use.

The status of the affected person can be determined during the planning and implementation stages of the project.

Project design

11. The implementing agency will demonstrate that involuntary land acquisition or restriction on land use are limited to direct project requirements for clearly specified project purposes within a clearly specified period of time. The implementing agency will consider feasible alternative project designs to avoid or minimise land acquisition or restrictions on land use, especially where this would result in physical or economic displacement, at the same time, balancing environmental, social, and financial costs and benefits, and particular consideration to gender impacts and impacts on the vulnerable.

Compensation and benefits for affected persons

12. When land acquisition or restriction on land use (both permanent and temporary) cannot be avoided, the implementing agency will offer affected persons compensation at replacement cost, and other assistance may be necessary to help them improve or at least restore their standards of living or livelihoods, subject to the provisions of paragraph 26 to 36 of this ESSS.

13. Compensation standards for categories of land and fixed assets will be disclosed and applied consistently. Compensation rates may be subject to upward adjustment where negotiation is applied. In all cases, a clear basis for calculation of compensation will be documented, and compensation distributed in accordance with transparent procedures.

14. The implementing agency will take possession of acquired land and related assets only after compensation in accordance with this ESSS has been confirmed, made available and, where applicable displaced people have been resettled. In addition, livelihood restoration and improvement programs will commence in a timely manner in order to ensure that affected persons are sufficiently prepared to take advantage of alternative livelihood opportunities as the need to do so arises.

15. In certain cases there may be significant difficulties related to the payment of compensation to particular affected persons, for example, where repeated efforts to contact absentee owners have failed, where project affected persons have rejected compensation that has been offered to them in accordance with the approved plan, or where competing claims to the ownership of lands or assets are subject to lengthy legal proceedings. On an exceptional basis, with prior agreement with the MFEM and any other relevant development partner, and where the implementing agency demonstrates that all reasonable efforts to resolve such matters have been taken, the implementing agency may deposit compensation funds as required by the plan (plus a reasonable amount of contingencies) into an interest-bearing escrow or other deposit account or with the Ministry of Justice (or any other government entity dealing with land titles) and proceed with the relevant project activities. Compensation will be made available to eligible persons in a timely manner as issues are resolved.

Community engagement

16. The implementing agency will engage with affected communities, including host communities, through the process of stakeholder engagement described in ESSS9. Decision making processes related to resettlement and livelihood restoration will include options and alternatives from which affected persons may choose. Disclosure of relevant information and meaningful participation of affected communities and persons will take place during the

consideration of alternative project designs referred to in paragraph 11, and thereafter throughout the planning, implementation, monitoring, and evaluation of compensation process, livelihood restoration activities, and relocation process.

17. The consultation process should ensure that women's perspectives are obtained and their interests accounted for in all aspects of resettlement planning and implementation. Addressing livelihood impacts may require intra-household analysis in cases where women's and men's livelihoods are affected differently. Women's and men's preferences in terms of compensation mechanisms, such as replacement land or alternative access to natural resources rather than money, should be explored.

Grievance mechanism

18. The implementing agency will ensure that a grievance mechanism for the project is in place, in accordance with the ESS9 as early as possible in project development to address specific concerns about compensation, relocation or livelihood restoration measures raised by displaced persons (or others) in a timely fashion. Where possible, such grievance mechanisms will utilise existing formal or informal grievance mechanisms suitable for project purposes, supplemented as needed with project specific arrangements designed to resolve disputes in an impartial manner.

Planning and implementation

19. Where land acquisition or restrictions on land use are unavoidable, the implementing agency will, as part of the environmental and social assessment, conduct a survey to identify the persons who will be affected by the project, to determine a register of land and assets to be affected. The register should include a detailed account of the full range of rights held or asserted by affected people, including those based on custom or practice, secondary rights such as rights of access or use for livelihood purposes, right held in common, etc. and should be derived through a consultative, impartial and transparent process. This register will be the basis of determining who will be eligible for compensation and assistance, and to discourage ineligible persons, such as opportunistic settlers, from claiming benefits. The social assessment will also address the claims of communities or groups who, for valid reasons, may not be present in the project area during the time of the survey, such as seasonal resource users. In conjunction with the survey, the implementing agency will establish a cut-off date for eligibility. Information regarding the cut-off date will be documented and will be disseminated throughout the project area at regular intervals in written and where appropriate, non-written forms in the relevant languages and dialects.

20. To address the issues identified in the environmental and social assessment, the implementing agency will prepare a plan proportionate to the risks and impacts associated with the project:

- (a) For projects with minor land acquisition or restrictions on land use, as a result of which there will be no significant impact on incomes or livelihoods, the plan will establish eligibility criteria for affected persons, set out procedures and standards for compensation, and incorporate arrangements for consultations, monitoring and addressing grievances;
- (b) For projects causing physical displacement, the plan will set out the additional measures relevant to relocation of affected persons;

- (c) For projects involving economic displacement, the plan will set out the additional measures relevant to relocation of affected persons;
- (d) For projects that may impose changes in land use that restrict access to resources in legally designated parks or protected areas or other common property resources on which local people may depend for livelihood purposes, the plan will establish a participatory process for determining appropriate restrictions on use and set out the mitigation measures to address adverse impacts on livelihoods that may result from such restrictions.

21. The implementing agency's plan will establish the roles and responsibilities relating to financing and implementation, and include arrangements for contingency financing to meet unanticipated costs, as well as arrangements for timely and coordinated response to unforeseen circumstances hindering progress toward desired outcomes. The full costs of resettlement activities necessary to achieve the objectives of the project are included in the total costs of the project. The costs of resettlement, like the costs of other project activities, are treated as a charge against the economic benefits of the project; and any net benefits to re-settlers (as compared to the 'without project' circumstances) are added to the benefit stream of the project.

22. The implementing agency will establish procedures to monitor and evaluate the implementation of the plan and will take corrective action as necessary during implementation to achieve the objectives of this ESS. The extent of monitoring activities will be proportionate to the project's risks and impacts. For all projects with significant involuntary resettlement impacts, the implementing agency will retain competent resettlement professionals to monitor the implementation of resettlement plans, design corrective actions as necessary, provide advice on compliance with this ESS and produce periodic monitoring reports. Affected persons will be consulted during the monitoring process. Periodic monitoring reports will be prepared and affected persons will be informed about monitoring in a timely manner.

23. Implementation of the implementing agency's plan will be considered completed when the adverse impacts of resettlement have been addressed in a manner that is consistent with the relevant plan as well as the objectives of this ESS. For all projects with significant involuntary resettlement impacts, the implementing agency will commission an external completion audit of the plan when all mitigation measures have been substantially completed. The completion audit will be undertaken by competent resettlement professionals, will assess whether livelihoods and living standards have been improved or at least restored and, as necessary, will propose corrective actions to meet the objectives not yet achieved.

24. Where the likely nature or magnitude of the land acquisition or restrictions on land use related to the project with potential to cause physical and/or economic displacement is unknown during project preparation, the implementing agency will develop a framework establishing general principles and procedures compatible with this ESS. Once the individual project components are defined and the necessary information becomes available, such a framework will be expanded into one or more specific plans proportionate to potential risks and impacts. No physical and/or economic displacement will occur until plans required by this ESS have been finalised and approved by the MFEM.

B. DISPLACEMENT

Physical displacement

25. The implementing agency will develop a plan that covers, at a minimum, the applicable requirements of this ESSS regardless of the number of people affected. The plan will be designed to mitigate the negative impacts of displacement and, as warranted, to identify development opportunities. It will include a resettlement budget and implementation schedule, and establish the entitlements of all categories of affected persons (including host communities). Particular attention will be paid to gender aspects and the needs of the poor and vulnerable. The implementing agency will document all transactions to acquire land rights, provision of compensation and other assistance associated with relocation activities.

26. If people living in the project area are required to move to another location, the implementing agency will: (a) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation; and (b) provide relocation assistance suited to the needs of the each group of displaced persons. New resettlement sites will offer living conditions at least equivalent to those previously enjoyed or consistent with prevailing minimum codes or standards, whichever one is higher. If new resettlement sites are to be prepared, host communities will be consulted regarding planning options, and resettlement plans will ensure continued access, at least at existing levels or standards, for host communities to facilities and services. The displaced persons preferences with respect to relocating in pre-existing communities and groups will be respected wherever possible. Existing social and cultural institutions of the displaced persons and any host communities will be respected.

27. In the case of physically displaced persons under paragraph 10 (a) or (b), the implementing agency will offer the choice of replacement property of equal or higher value, with security of tenure, equivalent or better characteristics, and advantages of location, or cash compensation at replacement cost.

28. In the case of physically displaced persons under paragraph 10 (c), the implementing agency will provide arrangements to allow them to obtain adequate housing with security of tenure. Where these displaced persons own structures, the implementing agency will compensate them for loss of assets other than land, such as dwellings and other improvements to the land at replacement cost. Based on consultation with displaced persons, the implementing agency will provide relocation assistance in lieu of compensation for land sufficient for them to restore their standards of living at an adequate alternative site.

29. The implementing agency is not required to compensate or assist those who encroach on the project area after the cut-off date for eligibility, provided that the cut-off date has been clearly established and made public.

30. The implementing agency will not resort to forced evictions of affected persons. 'Forced eviction' is defined as the permanent or temporary removal against the will of individuals, families, and/or communities from the homes and/or land which they occupy without the provision of, and access to, appropriate forms of legal and other protection, including all applicable procedures and principles in this ESS. The exercise of domain, compulsory acquisition or similar powers by a implementing agency will not be considered to be force eviction providing

it complies with the requirements of national law and the provisions of this ESSS, and is conducted in a manner consistent with basic principles of due process (including provision of adequate advance notice, meaningful opportunities to lodge grievances and appeals, and avoidance of the use of unnecessary, disproportionate or excessive force).

31. As an alternative to displacement, the implementing agency may consider negotiating in situ land development arrangements by which those to be affected may elect to accept a partial loss of land or localised relocation in return for improvements that will increase the value of their property after development. Any person not wishing to participate will be allowed to opt instead for full compensation and other assistance as required in this ESSS.

Economic displacement

32. In the case of projects affecting livelihoods or income generation, the implementing agency's plan will include measures to allow affected persons to improve, or at least restore, their incomes or livelihoods. The plan will establish the entitlements of affected persons and/or communities, paying particular attention to gender aspects and the needs of vulnerable segments of communities, and will ensure that these are provided in a transparent, consistent and equitable manner. The plan will incorporate arrangements to monitor the effectiveness of livelihood measures during implementation, as well as evaluation once implementation is completed. The mitigation of economic displacement will be considered complete when the completion audit concludes that affected persons or communities have received all of the assistance for which they are eligible, and have been provided with adequate opportunity to re-establish their livelihoods.

33. Economically displaced persons who face loss of assets or access to assets will be compensated for such loss at replacement cost:

- (a) In cases where land acquisition or restrictions on land use affect commercial enterprises, affected business owners will be compensated for the cost of identifying a viable alternative location; for the lost net income during the period of transition; for the cost of the transfer and reinstallation of the plant, machinery, or other equipment; and for re-establishing commercial activities. Affected employees will receive assistance for temporary loss of wages and, if necessary, assistance in identifying alternative employment opportunities.
- (b) In cases affecting persons with legal right or claims to land that are recognised under national law (see paragraph 10 (a) and (b)), replacement property (e.g. agricultural or commercial sites) of equal or greater value will be provided, or, where appropriate, cash compensation at replacement cost; and
- (c) Economically displaced persons who are without legally recognisable claims to land (see paragraph 10 (c)) will be compensated for lost assets other than land (such as crops, irrigation infrastructure and other improvements made to the land), at replacement cost. Additionally, the implementing agency will provide assistance in lieu of land compensation sufficient to provide such persons with an opportunity to re-establish livelihoods elsewhere. The implementing agency is not required to compensate or assist persons who encroach on the project area after the cut-off date for eligibility.

34. Economically displaced persons will be provided opportunities to improve, or at least restore, their means of income earning capacity, production levels, and standards of living:

- (a) For persons whose livelihoods are land-based, replacement land that has a combination of productive potential, locational advantages and other factors at least equivalent to that being lost will be offered where feasible;
- (b) For persons whose livelihoods are natural resource based and where project related restrictions on access envisage in paragraph 4 apply, measures will be implemented to either allow continued access to affected resources or to provide access to alternative resources with equivalent livelihood earning potential and accessibility. Where common property resources are affected, benefits and compensation associated with restrictions on natural resource usage may be collective in nature; and
- (c) If it is demonstrated replacement land or resources are unavailable, the implementing agency will offer economically displaced persons options for alternative income earning opportunities, such as credit facilities, skills training, business start-up assistance, employment opportunities, or cash assistance additional to compensation for assets. Cash assistance alone, however, frequently fails to provide affected persons with the productive means or skills to restore livelihoods.

35. Transitional support will be provided as necessary to all economically displaced persons, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.

C. COLLABORATION WITH OTHER RESPONSIBLE AGENCIES

36. The implementing agency will establish means of collaboration between agencies or entities who have responsibilities with the project planning, implementation, monitoring and evaluation; or who are responsible for any aspects of land acquisition, resettlement planning, or provision of necessary assistance. In addition, where capacity of other responsible agencies is limited the implementing agency will actively support resettlement planning, implementation, and monitoring. If the procedures or standards of other responsible agencies do not meet the relevant requirements of this ESSS, the implementing agency will prepare supplemental arrangements or provisions for inclusion in a resettlement plan to address identified shortcomings. The plan will also specify financial responsibilities for each of the agencies involved, appropriate timing and sequencing for implementation steps, and coordination arrangements for addressing financial contingencies or responding to unforeseen circumstances.

D. TECHNICAL AND FINANCIAL ASSISTANCE

37. The implementing agency may request technical assistance from the MFEM to strengthen their capacity, or the capacity of other responsible agencies, for resettlement planning, implementation and monitoring. Such forms of assistance may include staff training, assistance in formulating new regulations or policies relating to land acquisition or other aspects of resettlement, financing for assessments or other investment costs associated with physical or economic displacement, or other purposes.

38. The implementing agency may request for financing either a component of the main investment causing displacement and requiring resettlement, or a free standing resettlement project with appropriate cross-conditionality, processed and implemented in parallel with the with the investment that causes the displacement. The implementing agency may also request for financing for resettlement even though funding for the main investment that makes resettlement necessary, is not being provided via the MFEM.

ESSS5 – ANNEX 1. INVOLUNTARY RESETTLEMENT INSTRUMENTS

1. This Annex describes the elements of the plans addressing physical and/or economic displacement described in paragraph 20 of ESSS5. For purposes of this Annex, these plans shall be referred to as ‘resettlement plans’. Resettlement plans include measures to address physical and/or economic displacement, depending on the nature of the impacts expected from a project. Projects may use alternative terminology, depending on the scope of the resettlement plan – for example, where a project involves only economic displacement, the resettlement plan may be called a “livelihood plan” or where restrictions on access to legally designated parks and protected areas are involved, the plan may take the form of a “process framework”. This Annex also describes the framework referred to in paragraph 24 of ESSS5.

A. RESETTLEMENT PLAN

2. The scope of requirements and level of detail of the resettlement plan vary with the magnitude and complexity of the resettlement. The plan is based on up-to-date and reliable information about (a) the proposed project and its potential impacts on the displaced persons and other adversely affected groups, (b) appropriate and feasible mitigation measures, and (c) the legal and institutional arrangements required for effective implementation of resettlement measures.

Minimum elements of a resettlement plan

3. *Description of the project.* General description of the project and identification of the project area.

4. *Potential impacts.* Identification of:

- (a) The project components or activities that give rise to displacement, explain why the selected land must be acquired for use within the timeframe of the project;
- (b) The zone of impact of such components or activities;
- (c) The scope and scale of land acquisition and impacts on structures and other fixed assets;
- (d) Any project-imposed restrictions on use of, or access to, land or natural resources;
- (e) Alternatives considered to avoid or minimise displacement and why those were rejected; and
- (f) The mechanisms established to minimise displacement, to the extent possible, during project implementation.

5. *Objectives.* The main objectives of the resettlement program.

1. *Survey and baseline socioeconomic studies.* The findings of a household level survey identifying and enumerating affected persons, and, with the involvement of affected persons, surveying land, structures and other fixed assets to be affected by the project. The survey also serves essential functions:
 - (a) Identifying characteristics of displaced households, including a description of production systems, labour, and household organisation; and baseline information on livelihoods (including, as relevant, production levels and income derived from formal and informal

- economic activities) and standards of living (including health status) of the displaced population;
- (b) Information on vulnerable groups or persons for whom special provisions may have to be made;
 - (c) Identifying public or community infrastructure, property or services that may be affected;
 - (d) Providing a basis for the design of, and budgeting for, the resettlement program;
 - (e) In conjunction with establishment of a cut-off date, providing a basis for excluding ineligible people from compensation and resettlement assistance; and
 - (f) Establishing baseline conditions for monitoring and evaluation purposes.

As the MFEM may deem relevant, additional studies on the following subjects may be required to supplement or inform the survey:

- (g) Land tenure and transfer systems, including a register of common property natural resources from which people derive their livelihoods and sustenance, non-title-based areas where there is legal right to use (including, fishing, grazing or use of forest) governed by local recognised land allocation mechanisms, and any issues raised by different tenure systems in the project area;
- (h) The patterns of social interaction in the affected communities, including social networks and social support systems, and how they will be affected by the project; and
- (i) Social and cultural characteristics of displaced communities, including a description of formal and informal institutions (e.g. community organisations, faith based groups, nongovernmental (NGOs)) that may be relevant to the consultation strategy and to designing and implementing the resettlement activities.

7. *Legal framework.* The findings of an analysis of the legal framework, including:

- (a) The scope of the power of compulsory acquisition and imposition of land use restriction and the nature of compensation associated with it, in terms of both the valuation methodology and timing of payment;
- (b) The applicable legal and administrative procedures, including a description of the remedies available to displaced persons in the judicial process and the normal timeframe for such procedures, and any available grievance redress mechanisms that may be relevant to the project;
- (c) Laws and regulations relating to the agencies responsible for implementing resettlement activities; and
- (d) Gaps, if any, between local laws and practices covering compulsory acquisition, imposition of land use restrictions and provision of resettlement measures and ESS5, and the mechanisms to bridge such gaps.

2. *Institutional framework.* The findings of an analysis of the institutional framework covering:

- (a) The identification of agencies responsible for resettlement activities and NGOs/CSOs that may have a role in project implementation, including providing support for displaced persons;
- (b) An assessment of the institutional capacity of such agencies and NGOs/CSOs; and

- (c) Any steps that are proposed to enhance the institutional capacity of agencies and NGOs/CSOs responsible for resettlement implementation.

9. *Eligibility.* Definition of displaced persons and criteria for determining their eligibility for compensation and other resettlement assistance, including relevant cut-off dates.

10. *Valuation of and compensation for losses.* The methodology to be used in valuing losses to determine their replacement cost; and a description of the proposed types and levels of compensation for land, natural resources and other assets under local law and such supplementary measures as are necessary to achieve replacement cost for them.

11. *Community participation.* Involvement of displaced persons (including host communities, where relevant):

- (a) A description of the strategy for consultation with, and participation of, displaced persons in the design and implementation of the resettlement activities;
- (b) A summary of the views expressed and how these views were taken into account in preparing the resettlement plan;
- (c) A review of the resettlement alternatives presented and choices made by displaced persons regarding options available to them; and
- (d) Institutionalised arrangements by which displaced persons can communicate their concerns to project authorities throughout planning and implementation, and measures to ensure that vulnerable groups are adequately represented.

12. *Implementation schedule.* An implementation schedule providing anticipated dates for displacement, and estimated initiation and completion dates for all resettlement plan activities. The schedule should indicate how the resettlement activities are linked to the implementation of the overall project.

13. *Cost and budget.* Tables showing categorised cost estimates for all resettlement activities, including allowances for inflation, population growth and other contingencies; timetables for expenditures; sources of funds; and arrangements for timely flow of funds, and funding for resettlement, if any, in areas outside the jurisdiction of the implementing agencies.

14. *Grievance redress mechanism.* The plan describes affordable and accessible procedures for third party settlement of disputes arising from displacement or resettlement; such grievance mechanisms should take into account the availability of judicial recourse and community and traditional dispute settlement mechanisms.

15. *Monitoring and evaluation.* Arrangements for monitoring of displacement or resettlement activities by the implementing agency, supplemented by third party monitors as considered appropriate by the MFEM, to ensure complete and objective information; performance monitoring indicators to measure inputs, outputs, and outcomes for resettlement activities; involvement of the displaced persons in the monitoring process; evaluation of results for a reasonable period after all resettlement activities have been completed; using the results of resettlement monitoring to guide subsequent implementation.

16. *Arrangements for adaptive management.* The plan should include provisions for adapting resettlement implementation in response to unanticipated changes in project conditions, or unanticipated obstacles in achieving satisfactory resettlement outcomes.

Additional planning requirements where resettlement involves physical displacement

17. When project circumstances require the physical relocation of residents (or businesses), resettlement plans require additional information and planning elements. Additional requirements include:

18. *Transitional assistance.* The plan describes assistance to be provided for relocation of household members and their possessions (or business equipment and inventory). The plan describes any additional assistance to be provided for households choosing cash compensation and securing their own replacement housing, including construction of new housing. If planned relocation sites (for residences or businesses) are not ready for occupancy at the time of the physical displacement, the plan determines a transitional allowance sufficient to meet temporary rental expenses and other costs until occupancy is available.

19. *Site selection, site preparation and relocation.* When planned relocation sites are prepared, the resettlement plan describes the alternative relocation sites considered and explains sites selected covering:

- (a) Institutional and technical arrangements for identifying and preparing relocation sites, whether rural or urban, for which a combination of productive potential, locational advantages, and other factors is better or at least comparable to the advantages of the old sites, with an estimate of the time needed to acquire and transfer land and ancillary resources;
- (b) Identification and consideration of opportunities to improve local living standards by supplementary investment (or through establishment of project benefit sharing arrangements) in infrastructure, facilities or services;
- (c) Any measures necessary to prevent land speculation or influx of ineligible persons at the selected sites;
- (d) Procedures for physical relocation under the project, including timetables for site preparation and transfer; and
- (e) Legal arrangements for legitimising tenure and transferring of titles to those resettled, including provision of security of tenure for those previously lacking full legal rights to land and structures.

20. *Housing, infrastructure and social services.* Plans to provide (or to finance local community provision of) housing, infrastructure (e.g. water supply, feeder roads), and social services (e.g. schools, health services); plans to maintain or provide a comparable level of services to host populations; any necessary site development, engineering, and architectural designs for these facilities.

21. *Environmental protection and management.* A description of the boundaries of the planned relocation sites; and an assessment of the environmental impacts of the proposed resettlement

and measures to mitigate and manage these impacts (coordinated as appropriate with the environmental assessment of the project requiring the resettlement).

22. *Consultation on relocation arrangements.* The plan describes methods of consultation with physically displaced on their preferences regarding relocation alternatives available to them, including, as relevant, choices related to forms of compensation and transitional assistance, to relocating as individual households, families, or with preexisting communities, to sustain existing patterns of group organisation.

23. *Integration with host populations.* Measures to mitigate the impact of planned relocation sites on any host communities, including:

- (a) Consultations with host communities, traditional leaders and local authorities;
- (b) Arrangements for prompt tendering of any payment due to the hosts for land or other assets provided in support of planned relocation sites;
- (c) Arrangements for identifying and addressing any conflict that may arise between those resettled and host communities; and
- (d) Any measures necessary to augment services (e.g. education, water, health, and production services) in host communities to meet increased demands upon them, or to make them at least comparable to services available within planned relocation sites.

Additional planning requirements where resettlement involves economic displacement

24. If land acquisition or restrictions on use of, or access to, land or natural resources may cause significant economic displacement, arrangements to provide displaced persons with sufficient opportunity to improve, or at least restore, their livelihoods are also incorporated into the resettlement plan, or into a separate livelihoods improvement plan. These include:

25. *Direct land replacement.* For those with agricultural livelihoods, the resettlement plan provides for an option to receive replacement land of equivalent productive value, or demonstrates that sufficient land of equivalent value is unavailable. Where replacement land is available, the plan describes methods and timing for its allocation to displaced persons.

26. *Loss of access to land or resources.* For those whose livelihood is affected by loss of land or resource use or access, including common property resources, the resettlement plan describes means to obtain substitutes or alternative resources, or otherwise provides support for alternative livelihoods.

27. *Support for alternative livelihoods.* For all other categories of economically displaced persons, the resettlement plan describes feasible arrangements for obtaining employment or for establishing a business, including provision of relevant supplemental assistance including skills training, credit, licenses and permits, or specialized equipment. As warranted, livelihood planning provides special assistance to women and vulnerable groups who may be disadvantaged in securing alternative livelihoods.

28. *Consideration of economic development opportunities.* The resettlement plan identifies and assesses any feasible opportunities to promote improved livelihoods as a result of resettlement

processes. This may include, for example, preferential project employment arrangements, support for development of specialized products or markets, preferential commercial zoning and trading arrangements, or other measures. Where relevant, the plan should also assess the feasibility of prospects for financial distributions to communities, or directly to displaced persons, through the establishment of project based benefit-sharing arrangements.

29. *Transitional Support.* The resettlement plan provides transitional support to those whose livelihoods will be disrupted. This may include payment for lost crops and natural resources, payment of lost profits for businesses, or payments of lost wages for employees affected by business relocation. The plan provides that transitional support continues for the duration of the transitional period.

B. RESETTLEMENT FRAMEWORK

30. The purpose of the resettlement framework is to clarify resettlement principles, organizational arrangements and design criteria to be applied to subprojects or project components to be prepared during project implementation (see ESS5, paragraph 24). Once the subproject or individual project components are defined and necessary information becomes available, such a framework will be expanded into a specific plan proportionate to the risks and impacts. Project activities that will cause physical and/or economic displacement will not commence until such specific plans have been finalized and approved by the MFEM.

31. The resettlement policy framework covers the following elements:

- (a) A brief description of the project and components for which land acquisition and resettlement are required, and an explanation of why a resettlement policy framework rather than a resettlement plan is being prepared;
- (b) Principles and objectives governing resettlement preparations and implementation;
- (c) A description of the process for preparing and approving resettlement plans;
- (d) Estimated displacement impacts and estimated numbers and categories of displaced persons, to the extent feasible;
- (e) Eligibility criteria for defining various categories of displaced persons;
- (f) Methods of valuing affected assets;
- (g) Organisational procedures for delivery of compensation and other resettlement assistance, including for projects involving private sector intermediaries, the responsibilities of the government, and the private developer;
- (h) A description of the implementation process, aligning resettlement implementation to civil works;
- (i) A description of the grievance redress mechanisms;
- (j) A description of arrangements for funding resettlement, including the preparation and review of cost estimates, the flow of funds, and contingency arrangements;
- (k) A description of mechanisms for consultations with, and participation of, displaced persons in planning, implementation, and monitoring; and
- (l) Arrangements for monitoring by the implementing agency and, if required, by third party monitors.

C. PROCESS FRAMEWORK

32. A process framework is prepared when MFEM supported projects may cause restrictions in access to natural resources in legally designated parks and protected areas. The purpose of the process framework is to establish a process by which members of potentially affected communities participate in the design of project components, determination of measures necessary to achieve the objectives of this ESSS, and the implementation and monitoring of relevant project activities.

33. Specifically, the process framework describes participatory processes by which the following activities will be undertaken:

- (a) *Project components will be prepared and implemented.* The documents should briefly describe the project and components or activities that may involve new or more stringent restrictions on natural resource use. It should also describe the process by which potentially displaced persons participate in the project design.
- (b) *Criteria for eligibility of affected persons will be determined.* The document should establish that potentially affected communities will be involved in identifying any adverse impacts, assessing of the significant impacts, and establishing of the criteria for eligibility for any mitigating or compensating measures necessary.
- (c) *Measures to assist affected persons in their efforts to improve their livelihoods or restore them, in real terms to pre-displaced levels, while maintaining the sustainability of the park or protected area will be identified.* The document should describe methods and procedures by which communities will identify and choose potential mitigating or compensating measures to be provided to those adversely affected, and procedures by which adversely affected community members will decide among the options available to them.
- (d) *Potential conflicts or grievances within or between affected communities will be resolved.* The document should describe the process for resolving disputes relating to resource use restrictions that may arise between or among affected communities, and grievances that may arise from members of the communities who are dissatisfied with the eligibility criteria, community planning measures, or actual implementation.

Additionally, the process framework should describe arrangements relating to the following:

- (e) *Administrative and legal procedures.* The document should review agreements reached regarding the process approach with relevant administrative jurisdictions and line ministries (including clear delineation for administrative and financial responsibilities under the project).
- (f) *Monitoring arrangements.* The document should review arrangements for participatory monitoring of the project activities as they relate to (beneficial and adverse) impacts on persons within the project impact area, and for monitoring the effectiveness of measures taken to improve (or at minimum restore) incomes, livelihoods and living standards.

ESSS 6. BIODIVERSITY CONSERVATION AND SUSTAINABLE MANAGEMENT OF LIVING NATURAL RESOURCES

INTRODUCTION

1. ESSS6 recognises that protecting and conserving biodiversity and sustainably managing living natural resources are fundamental to sustainable development. Biodiversity is defined as the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and ecological complexes of which they are a part; this includes diversity within species, between species, and of ecosystems. Biodiversity often underpins ecosystem services valued by humans. Impacts on biodiversity can therefore often adversely affect the delivery of ecosystem services (as set out in ESSS1).
2. ESSS6 recognises the importance of maintaining core ecological functions of habitats, including forests, and the biodiversity they support. Habitat is defined as a terrestrial, freshwater, or marine geographical unit or airway that supports living organisms and their interactions with the nonliving environment. All habitats support complexities of living organisms and vary in terms of species diversity, abundance and importance.
3. This ESSS also addresses sustainable management of primary production (the cultivation or rearing of plant or animals, including annual and regular crop farming, animal husbandry, aquaculture, plantation, forestry, etc.) and harvesting of living natural resources.
4. ESSS6 recognises the need to consider the livelihood of project-affected parties, including indigenous peoples, whose access to, or use of, biodiversity or living natural resources may be affected by a project. The potential, positive role of project-affected parties including indigenous peoples, in biodiversity conservation and sustainable management of living natural resources is also considered.

OBJECTIVES

- To protect and conserve biodiversity and habitats.
- To apply the mitigation hierarchy and the precautionary approach in the design and implementation of projects that could have an impact on biodiversity.
- To promote sustainable management of living natural resources.
- To support livelihoods of local communities, including indigenous peoples, and inclusive economic development, through the adoption of practices that integrate conservation needs and development priorities.

SCOPE OF APPLICATION

5. The applicability of this ESSS is established during the environmental and social assessment described in ESSS1.

6. Based on the environmental and social assessment, the requirements of this ESSS are applied to all projects that potentially affect biodiversity or habitats, either positively or negatively, directly or indirectly, or that depend upon biodiversity for their success.

7. This ESSS also applies to projects that involve primary production and/or harvesting of living natural resources.

REQUIREMENTS

A. GENERAL

8. The environmental and social assessment as set out in ESSS1 will consider direct, indirect or cumulative project related impacts on habitats and the biodiversity they support. This assessment will consider threats to biodiversity, for example, habitat loss, degradation and fragmentation, invasive alien species, overexploitation, hydrological changes, nutrient loading, pollution and incidental take, as well as projected climate change impacts. It will determine the significance of biodiversity or habitats based on their vulnerability and irreplaceability at a global, regional or national level and will also take into account the differing values attached to biodiversity and habitats by project-affected parties and other interested parties.

9. The implementing agency will avoid adverse impacts on biodiversity and habitats. When avoidance of adverse impacts is not possible, the implementing agency will implement measures to minimise adverse impacts and restore biodiversity in accordance with the mitigation hierarchy provided in ESSS1 and with the requirements of this ESSS. The implementing agency will ensure that competent biodiversity expertise is utilised to conduct the environmental and social assessment and the verification of the effectiveness and feasibility of mitigation measures. Where significant risks and adverse impacts on biodiversity have been identified, the implementing agency will develop and implement a Biodiversity Management Plan. Depending on the nature and the scale of the risks and impacts of the project, the Biodiversity Management Plan may be a standalone document, or may be included as part of the ESCP prepared under ESSS1.

10. Through the environmental and social assessment, the implementing agency will identify the potential project related risks to and impacts on habitats and the biodiversity they support. In accordance with the mitigation hierarchy, the implementing agency will make the initial assessment of the project risks and impacts without taking into account the possibility of biodiversity offsets (which are measurable conservation outcomes resulting from actions designed to compensate for significant residual adverse biodiversity impacts arising from project development and persisting after appropriate avoidance, minimization and restoration measures have been taken and should not be considered in determining inherent risks of the project.

11. The implementing agency's assessment will include characterisation of baseline conditions to a degree that is proportional and specific to the anticipated risk and significance of impacts. In planning and undertaking environmental and social assessment related to the biodiversity baseline, the implementing agency will conduct a desktop review, consult with experts, and use field-based approaches, as appropriate. Where further investigations are needed to evaluate the significance of potential impacts, the implementing agency will carry out additional investigation

and/or monitoring before undertaking any project related activities, and before taking irrevocable decisions about project design that could cause significant adverse impacts to potentially affected habitats and the biodiversity that they support.

12. Where the environmental and social assessment has identified potential risks and impacts on biodiversity or habitats, the implementing agency will manage those risks and impacts in accordance with the mitigation hierarchy. The implementing agency will adopt a precautionary approach and apply adaptive management practices in the implementation of mitigation and management measures are responsive to changing conditions and results of project monitoring.

Conservation of biodiversity and habitats

13. Habitat is defined as a terrestrial, freshwater or marine geographical unit or airway that supports groups of living organisms and their interaction with the non-living environment. Habitats vary in their significance for conserving globally, regionally and nationally biodiversity, their sensitivities to impacts, and importance attributed to them by different stakeholders. Because in most instances, habitat loss, degradation or fragmentation represents the greatest threat to biodiversity, much of the focus of biodiversity conservation actions is on maintaining or restoring suitable habitats.

14. This ESSS requires a differentiated risk management approach to habitats based on their sensitivity and values. This ESSS addresses all habitats, categorised as 'modified habitat', 'natural habitat', 'critical habitat', legally protected and international and regionally recognised areas of biodiversity value' which may encompass habitat in any or all of these categories.

15. For the protection and conservation of habitats and the biodiversity they support, the mitigation hierarchy includes biodiversity offsets. Offsets will be considered as a last resort, only if significant residual adverse impacts remain after all technically and financially feasible avoidance, minimisation and restoration measures have been considered.

16. A biodiversity offset will be designed and implemented to achieve measurable, additional, and long-term conservation outcomes that can reasonably be expected to result in no net loss and preferably a net gain of biodiversity. In the case of an offset used as a mitigation for residual adverse impacts on any area of critical habitat, a net gain is required. The design of a biodiversity offset will adhere to the 'like-for-like or better' principle.

17. When an implementing agency is considering the development of an offset as part of the mitigation strategy, stakeholders and qualified experts with demonstrated knowledge in offset design and implementation will be involved. The implementing agency will demonstrate the long term technical and financial feasibility of undertaking the offset. When offsets are proposed for residual adverse impacts on critical habitat, the implementing agency will engage one or more independent recognised experts to advice as to whether the proposed offset is feasible and whether, in their professional opinion, it can be reasonably expected to result in a sustainable net gain of biodiversity values for which the critical habitat is designated.

18. Certain residual adverse impacts cannot be offset, particularly if the affected area is unique and irreplaceable from a biodiversity position. In such cases, the implementing agency will not

undertake the project unless it is redesigned to avoid the need for such offset, and to meet the requirements of this ESSS.

Modified habitat

19. Modified habitat are areas that may contain a large proportion of plant and/or animal species of non-native origin, and/or where human activity has substantially modified an area's primary ecological functions and species composition. Modified habitats may include, for example, areas managed for agriculture, forest, plantations, reclaimed coastal zones, and reclaimed wetlands.

20. This ESSS applies to those areas of modified habitat that includes significant biodiversity value, as determined by the environmental and social assessment required in ESSS1. The implementing agency will avoid or minimise impacts on such biodiversity and implement mitigation measures as appropriate.

Natural habitat

21. Natural habitats are areas composed of viable groups of plant and/or animal species of largely native origin, and/or where human activity has not essentially modified an area's primary ecological functions and species composition.

22. If natural habitats are identified as part of the assessment, the implementing agency will seek to avoid adverse impacts on them in accordance with the mitigation hierarchy. Where natural habitats have the potential to be adversely affected by the project, the implementing agency will not implement any project-related activities:

- (a) There are technically and financially feasible alternatives; and
- (b) Appropriate mitigation measures are put in place, in accordance with the mitigation hierarchy, to achieve no net loss and, where feasible, preferably a net gain of biodiversity over the long term. When residual impacts remain despite best efforts to avoid, minimise and mitigate impacts, and where appropriate and supported by relevant stakeholders, mitigation measures may include biodiversity offsets adhering to the principle of 'like-for-like or better'.

Critical habitat

23. Critical habitat is defined as areas with high biodiversity importance or value, including:

- (a) Habitat of significant importance to Critically Endangered or Endangered species, as listed on the IUCN Red List of threatened species or equivalent national approaches;
- (b) Habitat of significant importance to endemic or restricted-range species;
- (c) Habitat supporting nationally or globally significant concentrations of migratory or congregatory species;
- (d) Highly threatened or unique ecosystems;
- (e) Ecological functions or characteristics that are needed to maintain the viability of the biodiversity values described in (a) to (d).

24. In areas of critical habitat, the implementing agency will not implement any project activities that have potential adverse impacts unless all of the following conditions are met:

- (a) No other viable alternatives within the region exist for development of the project in habitats of lesser biodiversity value;
- (b) All due process required under international obligations or national law that is a prerequisite to granting approval for project activities in or adjacent to a critical habitat has been compiled with;
- (c) The potential adverse impacts, or likelihood of such, on the habitat will not lead to measurable net reduction or negative change in those biodiversity values for which the critical habitat was designated;
- (d) The project is not anticipated to lead to a net reduction in the population of any Critically Endangered, Endangered, or restricted-range species, over a reasonable time period;
- (e) The project will not involve significant conversion or significant degradation of critical habitats. In circumstances where the project involves new or renewed forestry or agricultural plantations, it will not convert or degrade any critical habitat;
- (f) The project's mitigation strategy will be designed to achieve net gains of those biodiversity values for which the critical habitat was designated; and
- (g) A robust and appropriately designed, long term biodiversity monitoring and evaluation program aimed at assessing the status of the critical habitat is integrated into the implementing agency's management program.

25. Where an implementing agency has satisfied the conditions set out in paragraph 24, the project's mitigation strategy will be described in a Biodiversity Management Plan and set out in the ESCP.

Legally protected and internationally recognised areas of high biodiversity value

26. Where the project occurs within or has the potential to adversely affect an area that is legally protected, designated for protection, or regionally or internationally recognised, the implementing agency will ensure that any activities undertaken are consistent with the area's legal protection status and management objectives. The implementing agency will also identify and assess potential project-related adverse impacts and apply the mitigation hierarchy so as to prevent or mitigate adverse impacts of projects that could compromise the integrity, conservation objectives or biodiversity importance of such an area.

27. The implementing agency will meet the requirements of paragraphs 13 to 25 of this ESSS, as applicable. In addition the implementing agency will:

- (a) Demonstrate that the proposed development in such areas is legally permitted;
- (b) Act in a manner consistent with any government recognised management plans for such areas;
- (c) Consult and involve protected areas sponsors and managers, project affected parties including indigenous peoples, and other interested parties on planning, designing, implementing, monitoring and evaluating the proposed project, as appropriate; and
- (d) Implement additional programs, as appropriate, to promote and enhance the conservation aims and effective management of the area.

Invasive alien species

28. Intentional or accidental introduction of alien, or non-native, species of flora and fauna into areas where they are not normally found can be a significant threat to biodiversity, since some alien species can become invasive, spreading rapidly and destroying or out-competing native species.

29. The implementing agency will not intentionally introduce any new alien species (not currently established in the country or region of the project) unless this is carried out in accordance with the existing regulatory framework for such introduction. Notwithstanding the above, the implementing agency will not deliberately introduce any alien species with a high risk of invasive behavior, regardless if such introductions are permitted under the existing regulatory framework. All introductions of alien species will be subject to a risk assessment (as part of the implementing agency's environmental and social assessment) to determine the potential for invasive behavior. The implementing agency must implement measures to avoid the potential for accidental or unintended introductions including the transportation of substrates and vectors (such as soil, ballast, and plant materials) that may harbor alien species.

30. Where alien species are already established in the country or region of the proposed project, the implementing agency will exercise due diligence in not spreading them into areas in which they have not already become established. Where feasible, the implementing agency will take measures to eradicate such species from the natural habitats over which the implementing agency has management control.

Sustainable management of living natural resources

31. The implementing agency with projects involving primary production and harvesting of living natural resources will assess the overall sustainability of these activities, as well as their potential impacts on local, nearby or ecologically linked habitats, biodiversity and communities, including indigenous peoples.

32. The implementing agency will manage living natural resources in a sustainable manner, through the application of good management practices and available technologies. Where such primary production practices are codified in standards that are globally, regionally, or nationally recognised, particularly for industrial-scale operations, the implementing agency and the MFEM will agree on standards to be applied.

33. For projects involving small-scale producers, the implementing agency will require producers to operate in a sustainable manner and to gradually improve their practices where such opportunities exist. Where the project consist of a large number of small producers in the same geographical location, the implementing agency will assess the potential for cumulative risks and impacts.

34. Where the project includes commercial agriculture and forestry plantations (particularly projects involving land clearing), the implementing agency will locate such projects on land that is already converted or highly degraded (excluding any land that has been converted in anticipation of the project). In view of the potential for plantation projects to introduce invasive alien species and threaten biodiversity, such projects will be designed to prevent and mitigate

these potential threats to natural habitats. When the implementing agency invests in production forestry in natural forests, these forests will be managed sustainably.

35. Where projects involve harvesting of living natural resources, the implementing agency will require that these resources are managed in a sustainable way. In particular, forests and aquatic systems are principal providers of these resources, and need to be managed as specified below:

- (a) For projects involving industrial-scale commercial forest harvesting operations, the implementing agency will ensure that such operations are certified under an independent forest certification system or adhere to a time-bound phased action plan acceptable to the MFEM for achieving certification;
- (b) For projects involving forest harvesting operations conducted by small scale producers, by local communities under community forest management, or by such entities under joint forest management arrangements, where such operations are not directly associated with industrial-scale operation, the implementing agency will ensure that they (i) have achieved a standard of sustainable forest management developed with the meaningful participation of project affected parties including indigenous people, consistent with the principles and criteria of sustainable forest management, even if not formally certified; or (ii) adhere to a time-bound action plan to achieve such a standard. The action plan will be developed with meaningful participation of project affected parties and be acceptable to the MFEM. The implementing agency will ensure that all such operations are monitored with the meaningful participation of project affected parties.
- (c) For projects involving industrial-scale harvesting of fish populations and all other types of marine and freshwater organisms, the implementing agency will demonstrate that their activities are being undertaken in a sustainable manner, consistent with the principles and criteria for sustainable harvesting.

36. For projects that do not involve primary production or harvesting of living natural resources and entail salvage logging, for example in areas to be inundated, the implementing agency will limit cleared areas to a minimum and justified by the project's technical requirements, and that relevant national legislation is being followed.

37. The implementing agency involved in the industrial production of crops and animal husbandry will avoid or minimize adverse risks or impacts.

B. PRIMARY SUPPLIERS

38. Where an implementing agency is purchasing natural resource commodities, including food, timber and fibres that are known to originate from areas where there is risk of significant conversion or significant degradation of natural or critical habitats, the implementing agency's environmental and social assessment will include an evaluation of the systems and verification practices used by primary suppliers.

39. The implementing agency will establish systems and verification practices which will:

- (a) Identify where the supply is coming from and the habitat type of the source area;
- (b) Where possible, limit procurement of those suppliers that can demonstrate that they are not contributing to significant conversion or degradation of natural or critical habitats;
and
- (c) Where possible and within a reasonable period, shift the implementing agency's primary suppliers to suppliers that can demonstrate that they are not significantly adversely impacting these areas.

40. The ability of the implementing agency to fully address these risks will depend on the implementing agency's level of control or influence over its primary suppliers.

ESSS7. INDIGENOUS PEOPLES AND TRADITIONAL LOCAL COMMUNITIES

INTRODUCTION

1. This ESSS applies to a distinct social and cultural group identified in accordance with paragraphs 8 and 9 of this ESSS. Indigenous peoples and traditional local communities in the Cook Islands context refers to the 'tangata enua' or people with blood ties to any of the islands in the Cook Islands. This terminology may be different for other contexts outside of the Cook Islands and should reflect national considerations and this ESSS includes all such alternative terminology.
2. ESSS7 contributes to sustainable development by ensuring that projects supported by MFEM enhance opportunities for indigenous peoples and traditional local communities to participate in, and benefit from, the development process in ways that do not threaten their unique cultural identities and well-being.
3. This ESSS recognises that indigenous peoples and traditional local communities have identities and aspirations that are distinct from the mainstream group in the national population that may be disadvantaged by foreign imposed models of development. In some cases, they do not receive equitable access to project benefits, or benefits are not planned or delivered in a way that is culturally appropriate, and they may not always be adequately consulted about the design or implementation of projects that may have significantly affect their lives or communities. This ESSS recognises that the roles of men and women in indigenous cultures or traditional local communities are often distinct and may need special consideration.
4. Indigenous peoples and traditional local communities are inextricably linked to the land on which they live and the natural resources on which they depend. They are therefore particularly vulnerable if their land and resources are transformed, encroached upon, or significantly degraded. Projects may also undermine language use, cultural practices, institutional arrangements and beliefs that indigenous peoples and traditional local communities view as essential to their identity or wellbeing. However, projects may also create important opportunities for indigenous peoples and traditional local communities to improve their quality of life and wellbeing. A project may create improved access to markets, schools, hospitals and other services that seek to improve living conditions. Projects can create opportunities for indigenous peoples and traditional local communities to participate in, and benefit from project related activities that may help them fulfil an aspiration to play an active and meaningful role as partners in development. Furthermore this ESSS recognises that indigenous peoples and traditional local communities play a vital role in sustainable development.
5. This ESSS recognises that the different historical and cultural backgrounds will form part of the environmental and social assessment of the project and that the assessment is intended to support identification of the measures to address concerns that project activities may exacerbate tensions.

OBJECTIVES

- To ensure that the development process factors full respect for human rights, dignity, aspirations, identity, culture, and natural resource-based livelihoods of indigenous peoples and traditional local communities.
- To avoid adverse impacts of projects on indigenous peoples and traditional local communities or when avoidance is not possible, to minimise, mitigate and/or compensate for such impacts.
- To promote sustainable development benefits and opportunities for indigenous peoples and traditional local communities in a manner that is accessible, culturally appropriate and inclusive.
- To improve project design and promote local support in establishing and maintaining an ongoing relationship based on meaningful consultation with indigenous peoples and traditional local communities affected by the project throughout the project life cycle.
- To recognise, respect and preserve the culture, knowledge, and practices of indigenous peoples and traditional local communities, and to provide them with the opportunity to adapt to changing conditions in a manner and in a timeframe acceptable to them.

SCOPE OF APPLICATION

6. This ESSS applies to indigenous peoples and traditional local communities and how they are referred to in the national context. This may mean that alternative terminology is used as appropriate to the national context of the implementing agency.

7. This ESSS applies whenever indigenous peoples and traditional local communities (as they may be referred to in the national context) are present in, or have collective attachment to a proposed project area, as determined during the environmental and social assessment. The ESSS applies regardless of whether indigenous peoples or traditional local communities are affected positively or negatively, and regardless of the significance of such impacts. This ESSS also applies irrespective of the presence or absence or discernible economic, political or social vulnerabilities, although the nature and extent of vulnerabilities will be a key variable in designing plans to promote equitable access to benefits or to mitigate adverse impacts.

8. The implementing agency may be required to seek inputs from appropriate specialists to meet the consultation, planning, or other requirements of this ESSS.

REQUIREMENTS

A. GENERAL

9. A key purpose of this ESSS is to ensure that indigenous peoples and traditional local communities present in, or with collective connection to, the project area are fully consulted about, and have the opportunity to actively participate in, project design and the determination of project implementation and arrangements. The scope and scale of consultation, as well as subsequent planning and documentation processes, will be in proportionate to the scope and

scale of potential project risks and impacts as they may affect the indigenous peoples and traditional local communities.

10. The implementing agency will assess the nature and degree of the expected direct and indirect economic, social, cultural and environmental impacts on indigenous peoples and traditional local communities who are present in, or have collective attachment to, the project area. The implementing agency will prepare a consultation strategy and identify the means by which the affected indigenous peoples and traditional local communities will participate in project design and implementation. Subsequently, effective project design and documentation will be developed as set out below.

11. The implementing agency's proposed measures and actions will be developed in consultation with the affected indigenous peoples and traditional local communities and contained in a time-bound plan, such as the Indigenous Peoples and Traditional Local Communities Plan. The scope and scale of the plan will be proportionate to the potential risks and impacts of the project. The format and title of the plan will be adjusted as appropriate to the project or country context, and will reflect any alternative terminology for indigenous peoples, as referred to in paragraph 6.

Projects designed solely to benefit indigenous peoples and traditional local communities

12. Where projects are designed to provide benefits only to indigenous peoples and traditional local communities, the implementing agency will proactively engage with the relevant indigenous peoples and traditional local communities to ensure their ownership and participation in project design, implementation, monitoring and evaluation. The implementing agency will also consult with them as to the cultural appropriateness of proposed services or facilities, and will seek to identify and address any economic and social constraints (including those related to gender) that may limit opportunities to benefit from, or participate in the project.

13. When indigenous peoples and traditional local communities are the sole, or overwhelming majority of, project beneficiaries, the elements of the plan may be included in the overall project design, and preparation of a stand-alone Indigenous Peoples and Traditional Local Communities plan is not necessary.

Projects where indigenous peoples and traditional local communities are not the sole beneficiaries

14. When indigenous peoples and traditional local communities are not the only beneficiaries of the project, planning requirements will vary with circumstances. The implementing agency will design and implement the project in a manner that provides affected indigenous peoples and traditional local communities with equitable access to project benefits. The concerns or preferences of indigenous peoples and traditional local communities will be addressed through meaningful consultations and project design, and documentation will summarise the consultation results and describe how indigenous peoples and traditional local communities' issues have been addressed in project design. Arrangements for ongoing consultations during implementation and monitoring will also be described.

15. The implementing agency will prepare a time-bound plan, such as an Indigenous Peoples and Traditional Local Communities plan setting out the measures or actions proposed. In some situations, a broader integrated community development plan will be prepared, addressing all

beneficiaries of the project and incorporating necessary information relating to the affected indigenous peoples and traditional local communities.

Avoidance of adverse impacts

16. Adverse impacts on indigenous peoples and traditional local communities will be avoided where possible. Where alternatives have been explored and adverse impacts are unavoidable, the implementing agency will minimize and/or compensate for these impacts in a culturally appropriate manner proportionate to the nature and scale of such impacts and the form and degree of vulnerability of the affected indigenous peoples and traditional local communities.

17. When situations arise in which projects potentially affect remote groups with limited external contact, also known as 'isolated peoples' or 'in initial contact', the implementing agency will take appropriate measures to recognise, respect and protect their land and territories, environment, health and culture, as well as measures to avoid any undesired contact with them as a consequence of the project. The aspects of the project that would result in such undesired contact will not be processed further.

Mitigation and development benefits

18. The implementing agency and affected indigenous peoples/traditional local communities will identify mitigation measures in alignment with the mitigation hierarchy described in ESS1 as well as opportunities for culturally appropriate and sustainable development benefits. The scope of assessment and mitigation will include cultural impacts as well as physical impacts. The implementing agency will ensure the timely delivery of agreed measures to affected indigenous peoples and traditional local communities.

19. The determination, delivery, and distribution of compensation and shared benefits to affected indigenous people and traditional local communities will take account of the institutions, rules and customs of the indigenous peoples and traditional local communities. Eligibility for compensation can be either individually or collectively based, or be a combination of both. Where compensation is on a collective basis, as far as practicable mechanisms that promote the effective use of compensation to all eligible members, or collective use of compensation in a manner that benefits all members of the group, will be defined and implemented.

20. Various factors including, but not limited to, the nature of the project, the project context and the vulnerability of affected indigenous peoples and traditional local communities will determine how affected indigenous peoples and traditional local communities will benefit from the project. Identified opportunities will aim to address the goals and preferences of the affected indigenous peoples and traditional local communities, including improvement in their standard of living and livelihoods in a culturally sensitive way, and to foster the long-term sustainability of the natural resources on which they depend.

Meaningful consultation tailored to indigenous peoples and traditional local communities

21. To promote effective project design, to build local project support or ownership, and to reduce the risk of project related delays or controversies, the implementing agency will undertake an engagement process with the affected indigenous peoples and traditional local communities as required in ESS9. This engagement process will include stakeholder analysis and engagement planning, disclosure of information, and meaningful consultation, in a culturally fitting and gender

and inter-generationally inclusive manner. For indigenous peoples and traditional local communities, the process of meaningful consultation will also:

- (a) Involve indigenous peoples and traditional local communities representative bodies and organisations (e.g. traditional leader groupings), and where appropriate, other community members;
- (b) Provide sufficient time for indigenous peoples and traditional local communities decision making processes; and
- (c) Allow for indigenous peoples and traditional local communities effective participation in the design of project activities or mitigation measures that could potentially affect them either positively or negatively.

B. GRIEVANCE MECHANISM

22. The implementing agency will ensure that a grievance mechanism is established for the project, as described in ESS9, which is culturally appropriate and accessible to the affected indigenous peoples and traditional local communities, and takes into account the availability of judicial recourse and customary dispute settlement mechanisms among indigenous peoples and traditional local communities.

ESSS 8. CULTURAL HERITAGE

INTRODUCTION

1. ESSS8 recognises that cultural heritage provides continuity in tangible and intangible forms between past, present and future. People identify with cultural heritage as reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. Cultural heritage, in its many forms, is important as a source of valuable scientific and historical information, as an economic and social asset for development, and as an integral part of people's cultural identity and practice. ESSS8 sets out measures designed to protect cultural heritage throughout the project life cycle.

2. This ESSS sets out general provisions on risks and impacts to cultural heritage from project activities.

OBJECTIVES

- To protect cultural heritage from the adverse impacts of project activities and supports its preservation.
- To address cultural heritage as an integral aspect of sustainable development.
- To promote meaningful consultation with stakeholders regarding cultural heritage.
- To promote the equitable sharing of benefits from the use of cultural heritage.

SCOPE OF APPLICATION

3. The applicability of this ESSS is established during the environmental and social assessment described in ESSS1.

4. The term 'cultural heritage' encompasses tangible and intangible heritage, which may be recognised or valued at a local, regional, national or global level, as follows:

- Tangible cultural heritage, which includes movable or immovable objects, sites, structures, groups of structures, and natural features and landscapes that have archaeological, historical, architectural, spiritual, aesthetic or other cultural significance. Tangible cultural heritage may be located in urban or rural settings, and may be above or below land or under water.
- Intangible cultural heritage, which includes, practices, representations, expressions, knowledge, skills – as well as instruments, objects, artefacts and cultural spaces associated therewith – that communities or groups recognise as part of their cultural heritage, passed on from generation to generation.

5. The requirements of this ESSS8 will apply to all projects that are likely to have risks or impacts on cultural heritage. This will include a project that:

- (a) Involves excavations, demolition, movement of earth, flooding or other changes in the physical environment;
- (b) Is located within a legally protected area or a legally defined buffer zone;
- (c) Is located in, or in the vicinity of, a recognised cultural heritage site; or
- (d) Is specifically designed to support the conservation, management and use of cultural heritage.

6. The requirements of ESSS8 apply to cultural heritage regardless of whether or not it has been legally protected or previously identified and disturbed.

7. The requirements of ESSS8 apply to intangible cultural heritage only if a physical component of a project will have a material impact on such cultural heritage or if a project intends to use such cultural heritage for commercial purposes.

REQUIREMENTS

A. GENERAL

8. The environmental and social assessment, as set out in ESSS1, will consider direct, indirect and cumulative project specific risks and impacts on cultural heritage. Through the environmental and social assessment, the implementing agency will determine the potential risks and impacts of the proposed activities of the project on cultural heritage.

9. The implementing agency will avoid impacts on cultural heritage. When avoidance of impacts is not possible, the implementing agency will identify and implement measures to address impacts on cultural heritage in accordance with the mitigation hierarchy. Mitigation measures include, for example, relocating or modifying the physical footprint of the project; conservation and rehabilitation in situ; relocation of cultural heritage; documentation; strengthening the capacity of national or local institutions responsible for managing cultural heritage affected by the project; establishment of a monitoring system to track the progress or effectiveness of these activities; establishment of an implementation schedule and required budget for the identified mitigation measures; and cataloguing of finds; etc. Where appropriate the implementing agency will develop a Cultural Heritage Management Plan. This may be developed as a stand-alone document or, depending on the nature and scale of the risks and impacts of the project, as part of the ESCP.

10. The implementing agency will implement globally recognised practices for field-based study, documentation and protection of cultural heritage in connection with the project, including by contractors and other third parties.

11. When a cultural heritage is previously unknown but is encountered during project activities, this will be treated as a 'chance finds'. A chance finds procedure will be included in all contracts relating to construction of a project, including excavations, demolition, movement of earth, flooding or other changes in the physical environment. The chance finds procedures will set out how chance finds related to the project will be managed. The procedure will include the requirement to notify relevant authorities of found objects or sites by cultural experts; to fence off the area of finds or sites to avoid further disturbance; to conduct an assessment of found

objects or sites by cultural heritage experts; to identify and implement actions consistent with the requirements of this ESSS and national law; and to train project personnel and project workers on chance find procedures.

12. Where necessary due to the potential risks and impacts of a project, the environmental and social assessment will involve the participation of cultural experts. If the environmental and social assessment determines that the project may, at any time during the project life cycle, have significant potential risks and impacts on cultural heritage, the implementing agency will engage cultural heritage experts to assist in the identification, valuation assessment and protection of cultural heritage.

B. STAKEHOLDER CONSULTATION AND IDENTIFICATION OF CULTURAL HERITAGE

13. The implementing agency will identify, in accordance with ESSS9, stakeholders that are relevant for the cultural heritage that is known to exist or is likely to be encountered during the project life cycle. Stakeholders will include, as relevant:

- (a) Project affected parties, including individuals and communities within the country who use or have used the cultural heritage within living memory; and
- (b) Other interested parties, which may include national or local regulatory authorities that are entrusted with the protection of cultural heritage and nongovernmental organisations and cultural heritage experts, including national and international cultural heritage organisations.

14. The implementing agency will carry out meaningful consultations with stakeholders in accordance with ESSS9 in order to identify cultural heritage that may be affected by the potential project; consider the significance of the cultural heritage affected by the project; assess the potential risks and impacts; and explore avoidance and mitigation options.

Confidentiality

15. The implementing agency, in consultation with the MFEM, project affected parties (including individuals and communities) and cultural heritage experts, will determine whether disclosure of information regarding cultural heritage would compromise or endanger the safety or integrity of the cultural heritage or would jeopardise the sources of information. If so, sensitive information may be excluded from public disclosure. The implementation entity must establish measures to maintain confidentiality if the project affected parties hold the location, characteristics, or traditional use of the cultural heritage in secret.

Stakeholder access

16. Where the implementing agency's project site contains cultural heritage or stops access to cultural heritage sites that were previously accessible, the implementing agency will, based on consultations with the users of the site, allow continued access to the cultural site, or will provide an alternative access route, subject to overriding health, safety and security considerations.

C. LEGALLY PROTECTED CULTURAL HERITAGE AREAS

17. As part of the environmental and social assessment, the implementing agency will determine the presence of all listed legally protected cultural heritage sites affected by the project, such as world heritage sites and nationally and locally protected areas. If the proposed project will be located within a legally protected area or a legally defined buffer zone, the implementing agency will:

- (a) Comply with local, national, regional or international cultural heritage regulations and the protected area management plans;
- (b) Consult with the protected area sponsors and managers, project affected parties (including individuals and communities) and other interested parties on the proposed project; and
- (c) Implement additional programs, as appropriate, to promote and enhance the conservation objectives of the protected area.

D. COMMERCIAL USE OF CULTURAL HERITAGE

18. Where a project intends to use cultural heritage of project affected parties (including individuals and communities) for commercial purposes, the implementing agency will inform the project affected parties of: (a) their rights under national law; (b) scope the nature of the commercial development and the potential impacts; and (c) the potential consequences of such development impacts.

19. The implementing agency will not proceed with such commercial use unless it: (a) carries out meaningful consultation with stakeholders as described in ESS9; (b) provides for fair and equitable sharing of benefits from commercial use of such cultural heritage, consistent with customs and traditions of the affected parties; and (c) identifies mitigation measures according to the mitigation hierarchy.

ESSS 9. STAKEHOLDER ENGAGEMENT AND INFORMATION DISCLOSURE

INTRODUCTION

1. This ESSS recognises the importance of open and transparent engagement between the implementing agency and the project stakeholders as an essential element of good practice. Effective stakeholder engagement can improve environmental and social sustainability of projects, enhance project acceptance, and make significant contribution to successful project design and implementation.

2. Stakeholder engagement is an inclusive process carried out during the project life cycle. Where properly designed and implemented, it supports the progression of strong, constructive and responsive relationships that are important for successful management a project's environmental and social risks. Stakeholder engagement is best when initiated at an early stage of the project development process, and is an integral part of early project decisions and assessment, management and monitoring of the project's environmental and social risks and impacts.

3. This ESSS must be read together with ESSS1. Requirements regarding engagement with workers are found in ESSS2. Special provisions on emergency preparedness and response are covered in ESSS2 and ESSS4. Where the project involves involuntary resettlement, indigenous peoples or cultural heritage, the implementing agency will apply disclosure and consultation requirements outlined in ESSS5, ESSS7 and ESSS8.

OBJECTIVES

- To establish a systematic approach to stakeholder engagement that will help implementing agencies identify stakeholders and build and maintain a constructive relationship with them, particularly with project affected parties.
- To assess the level of stakeholder interest and support for the project and to enable stakeholders' views to be accounted for in project design and environmental and social performance.
- To promote and provide means for effective and inclusive engagement with project affected parties throughout the project life cycle on issues that could potentially affect them.
- To ensure that appropriate project information on environmental and social risks and impacts is disclosed to stakeholders in a timely, understandable, accessible and appropriate manner and format.
- To provide project affected parties with accessible and inclusive means to raise issues and grievances, and allow implementing agencies to respond and to manage such grievances.

SCOPE OF APPLICATION

4. ESSS9 applies to all projects supported through MFEM. The implementing agency will engage with stakeholders as an integral part of the project's environmental and social assessment and project design and implementation, as outlined in ESSS1.
5. For the purposes of this ESSS, 'stakeholder' refers to individuals or groups who:
 - (a) Are affected or likely to be affected by the project (project affected parties); and
 - (b) May have an interest in the project (other interested parties).

REQUIREMENTS

6. The implementing agency will engage with stakeholders throughout the project life cycle, initiating engagement as early as possible in the project development process and in a timeframe that enables meaningful consultation with stakeholders on project design. The nature, scope and frequency of stakeholder engagement will be proportionate to the nature and scale of the project and its potential risks and impacts.
7. The implementing agency will engage in meaningful consultations with all stakeholders. Timely, relevant, understandable and accessible information will be provided to stakeholders. Consultations will be conducted in a culturally appropriate manner, which is free of manipulation, interference, coercion, discrimination and intimidation.
8. The process of stakeholder engagement will involve the following, as set out in further detail in this ESSS: (i) stakeholder identification and analysis; (ii) planning how the engagement will occur; (iii) disclosure of information; (iv) consultation with stakeholders; (v) addressing and responding to grievances; and (vi) reporting to stakeholders.
9. The implementing agency will maintain, and disclose as part of the environmental and social assessment, a documented record of stakeholder engagement, including a description of the stakeholders consulted, a summary of feedback received and brief explanation of how the feedback was taken into account or the reasons why it was not.

A. ENGAGEMENT DURING PROJECT PREPARATION

Stakeholder identification and analysis

10. The implementing agency will identify the different stakeholders, both project affected parties and other interested parties. The stakeholders of a project will vary depending on the details of the project. As set out in paragraph 5, individuals or groups that are affected or likely to be affected by the project will be identified as 'project affected parties' and other individuals or groups that may have an interest in the project will be identified as 'other interested parties'.
11. The implementing agency will identify those project affected parties who because of their particular situations, may be disadvantaged or vulnerable. Based on this identification, the implementing agency may have different concerns or priorities about project impacts, mitigation mechanisms and benefits, and who may require different, or separate forms of engagement. An

adequate level of detail will be included in the stakeholder identification and analysis so as to determine the level of communication that is appropriate for the project.

12. Depending on the potential significance of environmental and social risks and impacts, the implementing agency may be required to retain independent third party specialist to assist in the stakeholder identification and analysis to support a comprehensive analysis and the design of an inclusive engagement process.

Stakeholder engagement plan

13. In consultation with the MFEM, the implementing agency will develop and implement a Stakeholder Engagement Plan (SEP) proportionate to the nature and scope of the potential risks and impacts of the project. A draft of the SEP will be disclosed as soon as possible during the 'Planning' stage of Te Tarai Vaka, and before project appraisal. The implementing agency will seek the views of stakeholders on the SEP, including on the identification of stakeholders and the proposals for future engagement. If significant changes are made to the SEP, the implementing agency will disclose the updated SEP.

14. The SEP will describe the timing and methods of engagement with stakeholders throughout the life cycle of the project agreed between the MFEM and the implementing agency, distinguishing between project affected parties and other interested parties. The SEP will also describe the range and timing of information to be communicated to project affected parties and other interested parties, as well as the type of information to be sought from them.

15. The SEP will be designed to take into account the main characteristics and interests of the stakeholders, and the different levels of engagement and consultation that will be appropriate for different stakeholders. The SEP will set out how communication with stakeholders will be handled throughout project preparation and implementation.

16. The SEP will describe measures that will be used to remove obstacles to participation, and how views of different affected groups will be captured. Where applicable, the SEP will include differentiated measures to allow the effective participation of those identified as disadvantaged or vulnerable. Specific approaches and increased level of resources may be needed for communications with such differently affected groups so that they can obtain the information they need regarding the issues that will potentially affect them.

17. When the stakeholder engagement with local individuals and communities depends significantly on community representatives, the implementing agency will make reasonable efforts to verify that such persons do, in fact, represent the views of those being represented, and that the representatives are facilitating the communication process in an appropriate manner.

18. In some circumstances, depending on the level of information available about the project (such as the location of the project), the SEP may take the format outlining general principles and a collaborative strategy to identify stakeholders and plan for an engagement process in accordance with this ESSS that will be implemented once further information on the project is known (such as location of the project).

Information disclosure

19. The implementing agency will disclose project information to allow stakeholders to understand the risks and impacts of the project, and potential opportunities. The implementing agency will provide stakeholders with access to the following information, as soon as possible before the project proceeds to project appraisal in the 'Planning' stage of the Te Tarai Vaka process, and in a timeframe that enables meaningful consultations with stakeholders on project design:

- (a) Purpose, nature and scale of project;
- (b) The duration of proposed project activities;
- (c) Potential risks and impacts of the project on local communities, and the proposals for mitigating these, highlighting potential risks and impacts that may disproportionately affect vulnerable and disadvantaged groups and describing the differentiated measures taken to avoid and minimise these;
- (d) The proposed stakeholder engagement process highlighting the ways in which stakeholders can participate;
- (e) The time and venue of any proposed public consultation meetings, and the process by which meetings will be notified, summarised and reported; and
- (f) The process and means by which grievances can be raised and will be addressed.

20. The information will be disclosed in relevant local languages and in a manner that is accessible and culturally appropriate, taking into account any specific needs of groups that may be differentially or disproportionately affected by the project or groups of the population with specific information needs (such as disability, literacy, gender, etc.).

Meaningful consultation

21. The implementing agency will undertake a process of meaningful consultation in a manner that provides the stakeholder with the opportunities to express their views on project risks, impacts, and mitigation measures, and allows the implementing agency to consider and respond to them. Meaningful consultation will be carried out on an ongoing basis as the nature of issues, impacts and opportunities evolves.

22. Meaningful consultation is a two-way process that:

- (a) Begins early in the project development process to gather views on the project proposal and inform project design;
- (b) Encourages stakeholder feedback, particularly as a way of informing project design and engagement by stakeholders in the identification and mitigation of environmental and social risks and impacts;
- (c) Continues on an ongoing basis, as risks and impacts arise;
- (d) Is based on the prior disclosure and dissemination of relevant, transparent, objective, and easily accessible information in a timeframe that enables meaningful consultations with stakeholders in a culturally appropriate manner, in relevant languages that is understandable to stakeholders;
- (e) Considers and responds with feedback;
- (f) Supports active and inclusive engagement with project affected parties;

- (g) Is without external manipulation, interference, coercion, discrimination, and intimidation; and
- (h) Is documented and disclosed by the implementing agency.

B. ENGAGEMENT DURING PROJECT IMPLEMENTATION AND EXTERNAL REPORTING

23. The implementing agency will continue to engage with, and provide information to, project affected parties and other interested parties throughout the life cycle of the project, in a manner appropriate to the nature of their interest and the potential environmental and social risks and impacts of the project.

24. The implementing agency will continue to conduct stakeholder engagement in accordance with the SEP, and will build upon the channels of communication and engagement already established with stakeholders. The implementing agency will seek feedback from stakeholders on the environmental and social performance of the project, and the implementation of the mitigation measures in the ESCP.

25. If there are significant changes to the project that result in additional risks and impacts, particularly where these will impact project affected parties, the implementing agency will provide information of such risks and impacts and consult with project affected parties on how these risks and impacts will be mitigated. The implementing agency will disclose an updated ESCP, setting out any additional mitigation measures.

C. GRIEVANCE MECHANISM

26. The implementing agency will respond to concerns and grievances of project affected parties related to the environmental and social performance of the project in a timely manner. As such, the implementing agency will propose and implement a grievance mechanism to receive and facilitate resolution of such concerns and grievances.

27. The grievance mechanism will be proportionate to the potential risks and impacts of the project and will be accessible and inclusive. Where feasible and suitable for the project, the grievance mechanism will utilise existing formal and informal grievance mechanisms, supplemented if required with project specific arrangements. Further details on grievance mechanisms are set out in Annex 1.

- (a) The grievance mechanism is expected to address concerns promptly and effectively, in a transparent manner that is culturally appropriate and readily accessible to all project affected parties, at no cost and without reprisal. The mechanism, process or procedure will not prevent access to judicial or administrative remedies. The implementing agency will inform the project affected parties about the grievance process in the course of its engagement activities, and will make publicly available a record of documenting the responses to all grievances received; and
- (b) Handling of grievances will be done in a manner that is culturally appropriate and be discreet, objective, sensitive and responsive to the needs and concerns of the project affected

parties. The mechanism will also allow for anonymous complaints to be raised and addressed.

D. ORGANISATIONAL CAPACITY AND COMMITMENT

28. The implementing agency will define clear roles, responsibilities and authority as well as designate specific personnel to be responsible for the implementation and the monitoring of stakeholder engagement activities and compliance with this ESSS.

ESSS9 – ANNEX 1. GRIEVANCE MECHANISM

1. The scope, scale and type of grievance mechanism required will be proportionate to the nature and scale of the potential risks and impacts of the project.
2. The grievance mechanism may include the following:
 - (a) Different ways in which users can submit their grievances, which may include submissions in person, by phone, text message, mail, email or via a website;
 - (b) A log where grievances are registered in writing and maintained as a database;
 - (c) Publicly advertised procedures, setting out the length of time users can expect to wait for acknowledgement, response and resolution of their grievances;
 - (d) Transparency about the grievance procedure, governing structure and decision makers; and
 - (e) An appeals process (including the national judiciary) to which unsatisfied grievances may be referred when resolution of grievance has not been achieved.
3. The implementing agency may provide mediation as an option where users are not satisfied with the proposed resolution.

AN EXAMPLE OF A GRIEVANCE MECHANISM – PEARL ADAPTATION FUND PROJECT

The Grievance Redress Mechanism (GRM) will implement the policy and guidelines of the CIG TTV GRM procedure. As set out in TTV policy, the GRM will support the enhancement of environment and social well-being, including human rights and gender equality. The GRM will receive and facilitate the resolution of concerns, complaints, and grievances about the programme’s environmental, social, human rights, gender performance as well as other general complaints relating to the programme. When and where the need arises, this mechanism will be used for addressing any complaints that may arise during the implementation of the programme.

Concerns, complaints and grievances by affected persons will be directed to the Project Management Unit (PMU) where the Project Coordinator, Environmental and Social Safeguard (ESS) and Gender Specialists will be the focal points to receive, record, review, and address concerns in coordination with relevant stakeholders (e.g. CINCW) depending on the nature of the complaint. A complaints register will be maintained to record the date, details, and nature of each complaint, the name of the complainant, and the date and actions taken as a result of the follow-up investigation. The register will also cross-reference any non-compliance report and/or corrective action report or other relevant documentation relating to the complaint.

At the inception workshop, information summarising the GRM process and governance including contact details of the PMU and grievance form will be provided. This information will be developed into a poster for the PMU office, project sites and social media channels.

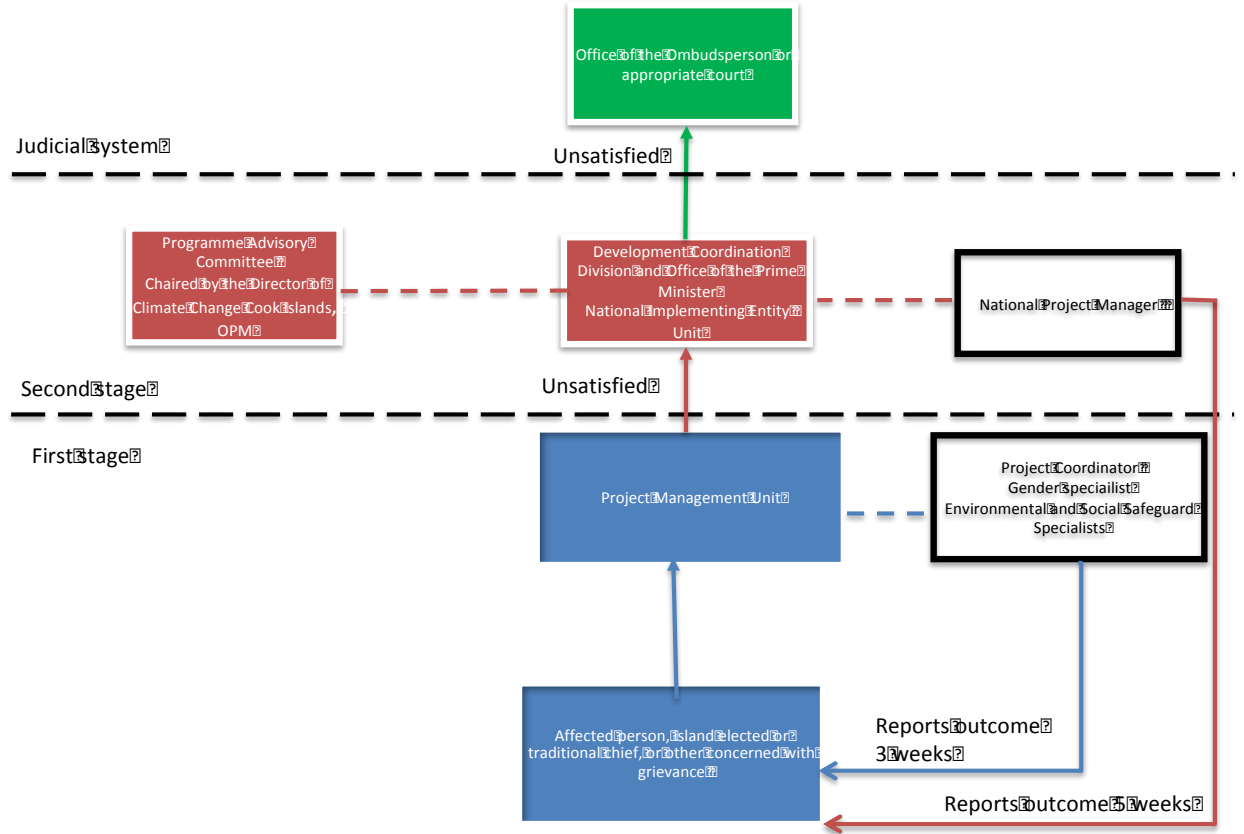
Table 1 presents the steps and corresponding time frame for the grievance redress mechanism.

Table 1: Grievance Redress Process

Stage	Process	Duration
1	Any affected person, island elected or traditional chief, or other concerned party takes grievance to PMU.	Any time
2	Project Coordinator, ESS or Gender Specialist reviews and finds solution to the problem in consultation with island elected or traditional chief and relevant agencies.	2 weeks
3	Project Coordinator, ESS or Gender Specialist reports back an outcome to affected person who submitted the grievance.	1 week
If unresolved or not satisfied with the outcome at PMU level or has received no report in the allotted time period		
4	Affected person takes grievance through Island Council or CINCW to OPM or NIE .	Within 2 weeks of receipt of decision in step 3
5	OPM/NIE reviews and finds a solution which may include recommendation of dispute resolution, including an appropriate body to oversee.	4 weeks
6	OPM/NIE reports back to the affected person who made the complaint.	1 week
If unresolved or at any stage if concerned party is not satisfied		
Affected party can take the matter to Office of the Ombudsperson or appropriate court.		As per Office of the Ombudsperson or judicial system

Figure 9 illustrates the grievance procedure, governing structure and decision makers and this will become part of the information poster.

Figure 1: Grievance procedure, governing structure and decision makers



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